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96th Congress 2d Session | HOUSE OF REPRESENTATIVES | Report No. 96-1251

HIGHER EDUCATION

August 25, 1980—Ordered to be printed

Mr. Ford of Michigan, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 5192]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Education Amendments of 1980".

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NEW PROGRAMS ESTABLISHED

Sec. 101. (a) Title I of the Act is amended to read as follows:

"TITLE I—CONTINUING POSTSECONDARY EDUCATION PROGRAM AND PLANNING

"Part A—Commission on National Development in Postsecondary Education

"FINDINGS

"Sec. 101. The Congress finds—

"(1) that institutions of higher education in our Nation and their human and intellectual resources are critical to the future of the American society, and that the Nation's economic potential, its strength and freedom, and the quality of life for all citizens are tied to the quality and extent of higher education available;

"(2) that it is the responsibility of the Federal Government, consistent with the rights, duties, and privileges of States and institutions of higher education, to promote—

"(A) equality of access to postsecondary education, without regard to age, race, sex, creed, handicap, national origin, geographic location, or economic status;

"(B) freedom of choice to students who wish to participate in postsecondary education, to select institutions and programs which meet their needs and abilities;

"(C) quality of postsecondary education, including the maintenance and extension of academic freedom, responsibility, and educational diversity;

"(D) responsiveness of postsecondary education to rapidly changing social and economic needs; and

"(E) the efficient use of resources in postsecondary education, and the optimal allocation of human, physical and financial resources, through efficient planning and management to achieve these goals; and

"(3) that demographic, economic, and social changes will require institutions of postsecondary education to adapt to the future needs of individuals and of American society.

"ESTABLISHMENT OF THE COMMISSION ON NATIONAL DEVELOPMENT IN POSTSECONDARY EDUCATION

"Sec. 102. (a) There is established a Commission to be known as the Commission on National Development in Postsecondary Education to review the effectiveness of policies to promote the Federal responsibilities set forth in clauses (A) through (E) of section 101(2).

"(b) The Commission shall be composed of twenty-five members as follows:

"(1) Nine members shall be appointed by the President of the United States.

"(2) Eight of the members shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader and the Minority Leader.

"(3) Eight members shall be appointed by the Speaker of the House of Representatives.

"(c)(1) Of each class specified in subsection (b) not more than four members shall be from the same political party, except in the case of the members appointed under clause (1), in which case not more than five members shall be from the same political party. The members of the Commission appointed from private life shall be individuals who by reason of experience or training are especially qualified to serve on the Commission.

"(2) In making appointments under subsection (b) of this section the President, the President pro tempore, and the Speaker of the House of Representatives shall give due consideration to the appointment of individuals who, collectively, will provide appropriate representation of institutions of higher education, State agencies responsible for postsecondary education, labor, the business community, and public service.

"(d) Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

"(e) The Commission shall select a Chairman and a Vice Chairman from among its members.

"(f) Thirteen members of the Commission shall constitute a quorum for the transaction of business, but the Commission may establish a lesser number as a quorum for the purpose of holding hearings, taking testimony, and receiving evidence.

"(g)(1) Members of the Commission who are Members of Congress or officers or employees of the executive branch of the Government shall serve without additional compensation but shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in carrying out the duties of the Commission.

"(2) Members of the Commission not otherwise employed by the Federal Government shall receive compensation at a rate equal to the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, including traveltime for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

"DUTIES OF THE COMMISSION

"SEC. 103. (a) The Commission shall study and investigate the extent to which national policies promote the objectives set forth in clauses (A) through (E) of section 101(2). Such study shall include, but not be limited to, consideration of—

"(1) the extent to which postsecondary educational planning by States and localities and institutions of higher education is designed to identify the future needs of education in American society;

"(2) the effectiveness of Federal financial assistance to students and institutions of higher education in promoting nation-

al development of postsecondary education in the most efficient manner;

"(3) the physical and financial capacity of institutions of higher education to carry out their mission, including the conduct of basic and applied research in the humanities and scientific and technical fields, and the relationship between institutions of higher education, public agencies, and the private sector in developing the capacity of higher education to promote such research;

"(4) the human and technical resources currently and prospectively available to institutions of higher education to enable them to address and respond to national and worldwide social and economic forces;

"(5) the effect of demographic changes on institutions of higher education and their constituent disciplines and professions and the ability of such institutions to meet national needs; and

"(6) the extent to which Federal student assistance may be used to promote the recruiting of individuals to serve in the Armed Forces and to retain members of the Armed Forces.

"(b)(1) In addition, the Commission shall conduct a study of the remaining barriers to adult postsecondary education which analyzes the characteristics of current or potential adult postsecondary students, the Federal response to the needs of adult postsecondary students, and the ability of educational institutions to respond to the growing postsecondary student population. For the purpose of the study conducted under this subsection, the term 'adult postsecondary student' means individuals twenty-two years of age or older.

"(2) In analyzing the characteristics of current or potential adult postsecondary students and the Federal response to their needs, the Commission shall—

"(A) review the extent to which such students are motivated by employment goals, and whether these students seek further education in order to enter the labor force or reenter after an extended absence, advance in a current career, or move from one career to another;

"(B) analyze the relationship between different employment motivations and sources of financial assistance for education, choice of institution or patterns of participation in postsecondary education;

"(C) evaluate the extent to which the unavailability or inaccessibility of financial aid sources may prevent educational participation by economically or socially disadvantaged adults, or otherwise limit their choice of educational focus or intensity of study; and

"(D) evaluate the extent to which age represents a barrier to participation in postsecondary education and the potential for greater participation in postsecondary education by individuals age 60 and older.

"(3) In analyzing the ability of postsecondary institutions to respond to the potential adult postsecondary student population, the Commission shall, at a mimimum—

"(A) review the availability of outreach, information, counseling, or supportive service programs, with particular attention to programs serving adults such as homemakers or retirees who

are least likely to have access to normal sources of educational information; and

"(B) review the availability of alternative methods of evaluating past education credits and experience to promote adult participation in postsecondary education, and the availability of remedial courses for adult students.

"(4) The Commission shall coordinate the study conducted under this subsection with the research and demonstration priorities of the National Institute of Education, and such other studies on student financial assistance as are authorized by this Act.

"(c) The Commission shall submit to the President and to the Congress such interim reports as it deems advisable and, not later than December 31, 1983, a final report of its study and investigation together with such recommendations, including recommendations for legislation, as the Commission deems advisable.

"(d) The Commission shall cease to exist 60 days after the submission of its final report.

"POWERS AND ADMINISTRATIVE PROVISIONS

"SEC. 104. (a) The Commission or, on authorization of the Commission, any subcommittee or member thereof, may, for the purposes of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, as the Commission or such subcommittee or member may deem advisable.

"(b) The Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government, shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law.

"(c) The Commission is authorized to—

"(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

"(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

"(3) enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services;

"(4) procure supplies, services, and property, and make contracts, without regard to the laws and procedures applicable to Federal agencies; and

"(5) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research

or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

"AUTHORIZATION

"SEC. 105. There are authorized to be appropriated $3,000,000 to carry out the provisions of this part for the period beginning October 1, 1981 through March 1, 1984.

"PART B—EDUCATION OUTREACH PROGRAMS

"FINDINGS

"SEC. 111. The Congress finds that—

"(1) the rapid pace of social, economic, and technological change has created pressing needs for postsecondary educational opportunities for adults in all stages of life;

"(2) postsecondary educational opportunities in the United States are traditionally provided for individuals between the ages of eighteen and twenty-two;

"(3) many adults are barred from advancement or self-sufficiency by lack of access to, and lack of retention in, postsecondary educational opportunities appropriate to their needs, or by lack of information or support services concerning the availability of postsecondary educational opportunities;

"(4) access to postsecondary educational opportunities is severely limited for adults whose educational needs have been inadequately served during youth, or whose age, sex, race, handicap, national origin, rural isolation, or economic circumstance may be a barrier to such opportunities;

"(5) with declining population growth rates, the future of postsecondary education in the United States is largely dependent upon its ability to respond to the challenges of new student populations;

"(6) service in continuing education will be better achieved through increased emphasis on planning and coordination which more effectively utilizes existing resources of both public and private sectors; and

"(7) to meet the unique problems and needs of adults who are disadvantaged in seeking access to postsecondary educational opportunities, resources must be marshalled from a wide range of institutions and groups, including community colleges, community-based educational institutions, business, industry, labor, and other public and private organizations and institutions.

"STATE ALLOTMENTS

"SEC. 112. (a)(1) From 90 per centum of the funds appropriated for this part for each fiscal year, the Secretary shall—

"(A) allot to each State having an agreement under section 1203 of this Act an amount which bears the same ratio to 60 per centum of such amount as the adult population of that State bears to the adult population of all States, and

"(B) allot 40 per centum of such amount to all States having an agreement under section 1203 on an equal basis,

except that no State shall receive less than $187,500 in any such fiscal year. If 90 per centum of the sums appropriated for any fiscal year are insufficient to pay the allotment specified in clauses (A) and (B) of the previous sentence and the exception contained in the previous sentence, the amount of each State's allotment under such clauses (A) and (B) (but not the amount in the exception) shall be ratably reduced. If 90 per centum of the sums appropriated for any fiscal year are insufficient after the application of the previous sentence, the amount of each State's allotment shall be equal. In case additional funds become available in making such payments in any fiscal year during which the second and third sentence of this paragraph are applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(2) Ten per centum of the funds appropriated for this part shall be available for carrying out section 116.

"(b) If, in any fiscal year, a State does not wish to conduct comprehensive planning pursuant to section 113, the Secretary shall allot to such State an amount equal to the amount the State would otherwise receive for the conduct of programs of continuing education and information services under this part. The Secretary shall reallot the funds that would have been used by such State for the conduct of statewide planning under section 113 to all other States having agreements under section 1203. Such reallotments shall be made in proportion to their allotments pursuant to subsection (a).

"COMPREHENSIVE STATEWIDE PLANNING

"SEC. 113. (a)(1) Subject to paragraphs (2) and (3), each State with an agreement pursuant to section 1203 of this Act shall use at least 15 per centum but not to exceed 20 per centum of its allotment for the purpose of conducting comprehensive statewide planning for improving access and retention within the State to postsecondary educational programs for traditional and nontraditional learners, coordinating educational and occupational information and counseling services to youth and adults throughout the State, and promoting more effective and efficient use of available resources for continuing education within the State.

"(2) In any fiscal year in which appropriations for this part are equal to or exceed $18,500,000 but are less than $24,000,000, each State with an agreement pursuant to section 1203 of this Act shall use at least 10 per centum but not to exceed 15 per centum of its allotment for the purpose described in paragraph (1) of this subsection.

"(3) In any fiscal year in which the appropriations for this part are equal to or exceed $24,000,000, each State having an agreement pursuant to section 1203 of this Act shall use not to exceed 10 per centum of its allotment for the purpose described in paragraph (1) of this subsection.

"(b) A State shall submit to the Secretary at the end of each fiscal year for which sums have been received a list of programs assisted under this part, a brief description of the purposes of the programs, and an analysis of the relationship between grants and contracts awarded under this part and comprehensive statewide planning for postsecondary education.

"(c) Of the sums granted to States for comprehensive statewide planning, not less than 50 per centum shall be for the purpose of carrying out a program of statewide planning for continuing education in order to improve access for adults within the State to postsecondary education programs and to promote more effective and efficient use of available resources, including efforts to ensure equal treatment of applicants in the evaluation of grant proposals, except that the Secretary may, upon application, grant a waiver to a State which has demonstrated that the State has adequately provided for meeting the needs of adult learners in its statewide planning activities. Such planning shall give particular consideration to the educational needs of adults who have been inadequately served by programs of postsecondary education.

"(d) Planning undertaken pursuant to this section shall be coordinated, to the maximum extent feasible, with the planning activities under subpart 4 of part A and part B of title IV and section 485 of this Act; the Vocational Education Act; the Comprehensive Employment and Training Act; the Older Americans Act of 1965; the Rehabilitation Act of 1973; the Career Education Incentive Act; the Adult Education Act; the Veterans Readjustment Assistance Act; and other Federal, State, and local activities intended to provide outreach, guidance, counseling, and educational, student aid, and occupational information to persons within the State.

"(e) Each State may use the funds available for this section to conduct studies of student financial assistance needs and resources, information coordination, continuing education, and other topics consistent with the purposes of subsections (a) and (c) of this section.

"INFORMATION SERVICES

"SEC. 114. (a) Each State shall use not less than $50,000 nor more than 12 per centum of its allotment, whichever is greater, to conduct programs to develop and coordinate new and existing educational and occupational information and counseling programs to eliminate unnecessary duplication and to provide a more comprehensive delivery of services to both traditional and nontraditional learners seeking educational information and to youth and adults seeking occupational information.

"(b) Such educational and occupational information and counseling programs shall be coordinated to the maximum extent possible with those authorized by subpart 4 of part A and part B of title IV and section 485 of this Act; the Vocational Education Act; the Comprehensive Employment and Training Act; the Older Americans Act of 1965; the Rehabilitation Act of 1973; the Career Education Incentive Act; the Adult Education Act; the Veterans Readjustment Assistance Act; and other Federal, State, and local activities intended to provide outreach, guidance, counseling, and educational, student aid, and occupational information to persons within the State.

"(c) For the purposes of carrying out this section, each State may make grants to, and enter into contracts with, institutions of higher education, public and private institutions and organizations, business, industry, and labor, or any combination thereof.

"CONTINUING EDUCATION

"SEC. 115. (a) Each State shall use such sums as may remain available from that State's allotment after reserving the amounts required to carry out the provisions of sections 113 and 114 of this part for the purpose of—

"(1) promoting access to and retention in postsecondary educational programs for adults whose educational needs have been inadequately served;

"(2) expanding and improving postsecondary education programs which help adults develop their occupational potential and prepare for transitions between education and work;

"(3) eliminating barriers posed by previous education or training, age, sex, race, handicap, national origin, rural isolation, or economic circumstance which may place adults at a disadvantage in seeking postsecondary educational opportunities;

"(4) strengthening statewide and other mechanisms of information, counseling, and referral which provide access to postsecondary education and serve the special needs of adults; and

"(5) developing strategies to promote the financial self-sufficiency of postsecondary education programs initiated pursuant to this part.

"(b) To promote the purposes of subsection (a), each State may make grants to and enter into contracts with public and private institutions and organizations, institutions of higher education, business, industry, and labor, or any combination thereof, for programs, such as—

"(1) the creation or expansion of labor education, training and technical assistance programs, and the development of cooperative relationships between State and local labor organizations and institutions and agencies which provide opportunities for continuing education;

"(2) the removal of barriers to continuing education caused by rural isolation or other rural-related factors;

"(3) legal, vocational, and health educational services and information services for older individuals who use preretirement education as a means to adjust to retirement;

"(4) the promotion of resource sharing for innovative uses of technology, including telecommunications, either on an interstate or intrastate basis, to overcome barriers to postsecondary educational opportunities;

"(5) educational and occupational information and counseling services designed to meet the special needs of adult women, particularly homemakers, and to assist their entry or reentry into postsecondary education and the labor force;

"(6) the collection and dissemination of information, including data banks, on sources of student financial assistance and information designed to assist individuals to make choices among postsecondary institutions, programs, and other educational opportunities;

"(7) community education service activities consistent with the purpose of this section for adults in rural areas;

"(8) postsecondary educational programs suited to individuals whose educational needs have been inadequately served, especially the handicapped, older individuals, migrant and season-

al farmworkers, individuals who can participate in programs only on a part-time basis, and individuals who otherwise would be unlikely to continue their education beyond high school; and

"(9) child care services to assist individuals desiring to participate to enter or reenter the field of postsecondary education and the labor force.

"(c) No grant or contract may be entered into to carry out the activities described in clause (9) of subsection (b) unless the agreement to make the grant or the contract contains provisions designed to assure that—

"(1) the State will provide assurances that the State has established a cooperative agreement between the State entity responsible for planning under section 113 and the agency responsible for coordinating child care services within the State; and

"(2) funds made available pursuant to such grant or contract will be used for services furnished only by child care providers licensed in the State or child care providers who have applied for renewal of such a license and are determined by the State to be likely to be approved for renewal.

"(d) Each State may use an amount which does not exceed 5 per centum of sums available for this section or $40,000, whichever is greater, for the administration and operation of programs described in subsection (b) of this section.

"FEDERAL DISCRETIONARY GRANTS

"SEC. 116. (a) From 10 per centum of the sums appropriated to carry out the provisions of this part, the Secretary is authorized to make grants to and enter into contracts with public and private institutions and organizations, institutions of higher education, business, industry, labor, and States, or any combination thereof for activities which—

"(1) develop and evaluate innovative delivery systems to increase access to postsecondary education for underserved adults;

"(2) expand the range of educational and community resources used to meet the needs of underserved adults for continuing education;

"(3) promote the development of interstate educational delivery systems, cooperative and consortial arrangements, and programs (including telecommunications) which more effectively address regional needs for continuing education;

"(4) stimulate and evaluate creative approaches to the problems of access for adults inadequately served by existing educational offerings;

"(5) develop statewide, regional, or national programs to coordinate educational and occupational information, including information on student financial assistance, through creation and expansion of data banks for the more effective coordination and dissemination of such information;

"(6) assist States to perform their functions of authorizing institutions of higher education effectively; and

"(7) provide preservice and inservice training to teachers and administrative personnel involved in child care programs, including the recruitment and training of low-income parents for child care positions, and provide specialized training in early

childhood education, and to provide improved teacher certification criteria for child care programs.

"(b) No grant may be awarded under this section within a State unless the Secretary has provided the State entity responsible for comprehensive planning under section 1203, if applicable, an opportunity to comment on the relationship of the proposed grant to such planning.

"NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION

"SEC. 117. (a) The President shall appoint a National Advisory Council on Continuing Education consisting of eight representatives of Federal agencies having postsecondary continuing education and training responsibilities, including but not limited to, one representative each from the Departments of Education, Agriculture, Defense, and Labor, and the Veterans' Administration; and twelve members, not full-time employees of the Federal Government, who are knowledgeable and experienced in the field of continuing education, including State and local government officials, representatives of business, labor, and community groups, and adults whose educational needs have been inadequately served. The Advisory Council shall meet at the call of the chairman but not less than twice a year.

"(b) The Advisory Council shall advise the Secretary in the preparation of general regulations and with respect to policies and procedures arising in the administration of this title.

"(c) The Advisory Council shall examine all federally supported continuing education and training programs and make recommendations with regard to policies to eliminate duplication and to effectuate the coordination of programs under this title and other federally funded continuing education and training programs and services.

"(d) The Advisory Council shall make annual reports to the President, the Congress, and the Secretary, commencing on September 30, 1981, of its findings and recommendations, including recommendations for changes in the provisions of this title and other Federal laws relating to continuing education and training activities. The President shall transmit each such report to the Congress with his comments and recommendations. The Advisory Council shall make such other reports or recommendations to the President, the Congress, the Secretary, or the head of any other Federal department or agency as may be appropriate.

"(e) The Advisory Council may utilize the services and facilities of any agency of the Federal Government as may be necessary. The Advisory Council may accept, employ, and dispose of gifts or bequests to carry out its responsibilities under this title.

"DEFINITIONS

"SEC. 118. For the purposes of this subpart—

"(1) the term 'Commission' means the Commission on National Development in Postsecondary Education established under section 102;

"(2) the term 'Advisory Council' means the National Advisory Council on Continuing Education established under section 117;

"(3) the term 'adults whose educational needs have been inadequately served' means individuals eighteen years of age or older who, because of circumstances of age, sex, low income, handicap, minority status, rural isolation, status of unemployment or underemployment, lack of education, or other significant barriers have been discouraged from obtaining equal educational opportunities;

"(4) the term 'continuing education' means postsecondary instruction and support services designed to meet the educational needs of adults, including the expansion of available learning opportunities for adults whose educational needs are inadequately served by current educational offerings in their communities; and

"(5) the term 'adult population' means the population eighteen years old and older of a State and of all the States which shall be determined by the Secretary on the basis of the most recent satisfactory data available from the Department of Commerce.

"APPROPRIATIONS AUTHORIZED AND PAYMENTS

"SEC. 119. (a) There is authorized to be appropriated $20,000,000 for fiscal year 1981; $40,000,000 for fiscal year 1982; $60,000,000 for fiscal year 1983; $80,000,000 for fiscal year 1984; and $100,000,000 for fiscal year 1985 to carry out the provisions of this part.

"(b) Payments under this part shall not exceed two-thirds of the cost of activities assisted under this part. The non-Federal share may be in cash or in kind, but may not include payments received under any other Federal program.

"(c) Each State is authorized to use not more than 50 per centum of the funds provided under section 113 for the purpose of carrying out programs under section 115.".

(b) Subpart 5 of part A of title IV of the Act is repealed.

TITLE II—AMENDMENT AND EXTENSION OF TITLE II OF THE HIGHER EDUCATION ACT OF 1965

EXTENSION AND REVISION OF LIBRARY PROGRAMS

SEC. 201. Title II of the Act is amended to read as follows:

"TITLE II—COLLEGE AND RESEARCH LIBRARY ASSISTANCE AND LIBRARY TRAINING AND RESEARCH

"PURPOSE; AUTHORIZATION

"SEC. 201. (a) The Secretary shall carry out a program to assist—

"(1) institutions of higher education in the acquisition of library resources, including law library resources, and in the establishment and maintenance of networks for sharing library resources in accordance with part A;

"(2) in the training of persons in librarianship and to encourage research and development relating to the improvement of libraries (including the promotion of economical and efficient in-

formation delivery, cooperative efforts, and developmental projects) in accordance with part B;

"(3) the Nation's major research libraries, in maintaining and strengthening their collections, and in making their holdings available to other libraries whose users have need for research materials, in accordance with part C; and

"(4) the establishment of a National Periodical System Corporation, in accordance with part D.

"(b)(1)(A) There are authorized to be appropriated to carry out part A $10,000,000 for the fiscal year 1981, $30,000,000 for the fiscal year 1982 and for each of the two succeeding fiscal years, and $35,000,000 for the fiscal year 1985.

(B) There are authorized to be appropriated to carry out part B $10,000,000 for the fiscal year 1981, $30,000,000 for the fiscal year 1982 and for each of the two succeeding fiscal years, and $35,000,000 for the fiscal year 1985.

(C) There are authorized to be appropriated to carry out part C $10,000,000 for the fiscal year 1981, $15,000,000 for the fiscal year 1982 and each of the three succeeding fiscal years.

"(2) Notwithstanding paragraph (1), no funds are authorized to be appropriated for part D unless the appropriation for each of parts A, B, and C equals or exceeds the amount appropriated for each such part, respectively, for fiscal year 1979.

"(c) No grant may be made under this title for books, periodicals, documents, or other related materials to be used for sectarian instruction or religious worship, or primarily in connection with any part of the program of a school or department of divinity.

"NOTIFICATION OF STATE AGENCY

"SEC. 202. Each institution of higher education which receives a grant under this title shall annually inform the State agency designated pursuant to section 1203 of its activities under this title.

"PART A—COLLEGE LIBRARY RESOURCES

"RESOURCE DEVELOPMENT GRANTS

"SEC. 211. (a) From the amount appropriated for this part, the Secretary shall make grants to institutions of higher education or combinations thereof (and to each branch of an institution which is located in a community different from that in which its parent institution is located), and to other public and private nonprofit library institutions whose primary function is to provide library and information services to institutions of higher education on a formal, cooperative basis. The amount of a resource development grant under this section shall not exceed $10,000.

"(b) A grant under this part may be made only if the application provides—

"(1) information about the institution and its library resources as prescribed by the Secretary in regulations;

"(2) satisfactory assurance that the applicant will expend, for all library material expenditures (exclusive of construction) during the fiscal year for which the grant is sought, from funds other than funds received under this part, an amount not less

than the average annual aggregate amount or the average amount per full-time equivalent student it expended for such purposes during the two fiscal years preceding the fiscal year for which assistance is sought under this part;

"(3) for such fiscal control and fund accounting procedures as are necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(4) for making such reports as the Secretary may require and for keeping such records and for affording such access thereto as the Secretary deems necessary to assure the correctness and verification of such reports.

"(c) If the Secretary determines, in accordance with regulations, that there are very unusual circumstances which prevent the applicant from making the assurance required by subsection (b)(2), the requirement for such assurance may be waived. For purposes of this subsection, the term 'very unusual circumstances' means theft, vandalism, fire, flood, earthquake, or other occurrence which may temporarily reduce the level of expenditures for library materials and total library purposes, or which resulted in unusually high expenditures for library materials and total library purposes.

"(d) Grants under this part may be used only for books, periodicals, documents, magnetic tapes, phonographic records, audiovisual materials, and other related library materials (including necessary binding) and for the establishment and maintenance networks for sharing library resources with other institutions of higher education.

"PART B—LIBRARY TRAINING, RESEARCH, AND DEVELOPMENT

"GRANTS AUTHORIZED

"SEC. 221. From the amount appropriated for this part, the Secretary shall make grants in accordance with sections 222, 223, and 224. Of such amount, one-third shall be available for the purposes of each such section.

"LIBRARY CAREER TRAINING

"SEC. 222. (a) The Secretary shall make grants to, and contracts with, institutions of higher education and library organizations or agencies to assist them in training persons in librarianship. Such grants or contracts may be used by such institutions, library organizations, or agencies (1) to assist in covering the cost of courses of training or study (including short term or regular session institutes), (2) to establish and maintain fellowships or traineeships with stipends (including allowances for travel, subsistence, and other expenses) for fellows and others undergoing training and their dependents, not in excess of such maximum amounts as may be determined by the Secretary, and (3) to establish, develop, or expand programs of library and information science, including new techniques of information transfer and communication technology.

"(b) Not less than 50 per centum of the grants made under this section shall be for the purpose of establishing and maintaining fellowships or traineeships under subsection (a)(2).

“*RESEARCH AND DEMONSTRATIONS*

“SEC. 223. The Secretary is authorized to make grants to, and contracts with, institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration projects related to the improvement of libraries, training in librarianship, and information technology, and for the dissemination of information derived from such projects.

“*SPECIAL PURPOSE GRANTS*

“SEC. 224. (a) The Secretary is authorized to make special purpose grants to (1) institutions of higher education to meet special national or regional needs in the library or information sciences, (2) combinations of institutions of higher education which demonstrate a need for special assistance in establishing and strengthening joint-use library facilities, resources, or equipment, (3) other public and private nonprofit library institutions which provide library and information services to institutions of higher education on a formal, cooperative basis for the purpose of establishing, developing, or expanding programs or projects that improve their services, and (4) institutions of higher education which demonstrate a need for special assistance to develop or expand programs or projects that will service the communities in which the institutions are located.

“(b) A grant under this section may be made only if the application therefor (whether by an individual institution or a combination of institutions) is approved by the Secretary on the basis of criteria prescribed in regulations and provides satisfactory assurance that (1) the applicant will expend during the fiscal year for which the grant is sought (from funds other than funds received under this title), for the same purpose as such grant, an amount from such other sources equal to not less than one-third of such grant, and (2) the applicant will expend during such fiscal year from such other sources for all library purposes (exclusive of construction) an amount not less than the average annual amount it expended for such purposes during the two fiscal years preceding the fiscal year for which the grant is sought under this section.

“*PART C—STRENGTHENING RESEARCH LIBRARY RESOURCES*

“*ELIGIBILITY FOR ASSISTANCE*

“SEC. [illegible]31. (a)(1) From the amount appropriated for this part, the Secretary shall make grants to institutions with major research libraries.

“(2) For the purposes of this part, the term ‘major research library’ means a public or private nonprofit institution (including the library resources of an institution of higher education), an independent research library, or a State or other public library, having a library collection which is available to qualified users and which—

“(A) makes a significant contribution to higher education and research;

“(B) is broadly based and is recognized as having national or international significance for scholarly research;

“(C) is of a unique nature, and contains material not widely available; and

"(D) is in substantial demand by researchers and scholars not connected with that institution.

"(b) No institution receiving a grant under this part for any fiscal year may receive a grant under section 211 or 224 for that year.

"GEOGRAPHICAL DISTRIBUTION OF GRANTS

"SEC. 232. In making grants under this part, the Secretary shall endeavor to achieve broad and equitable geographical distribution throughout the Nation.

"PART D—NATIONAL PERIODICAL SYSTEM

"PURPOSE

"SEC. 241. It is the purpose of this part to assess the feasibility and advisability of, and, if feasible and advisable, prepare a design for a national periodical system to serve as a national periodical resource by contributing to the preservation of periodical materials and by providing access to a comprehensive collection of periodical literature to public and private libraries throughout the United States.

"ESTABLISHMENT

"SEC. 242. There is established a nonprofit corporation, to be known as the National Periodical System Corporation, which shall not be considered an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this part, and to the extent consistent with this Act, to the laws of the jurisdiction where incorporated.

"FUNCTIONS OF THE CORPORATION

"SEC. 243. (a) The Corporation shall assess the feasibility and advisability of a national system and, if feasible and advisable, design such a system to provide reliable and timely document delivery from a comprehensive collection of periodical literature. A design may be implemented by the Corporation only in accordance with the provisions of section 248.

"(b) Any design for a national periodical system shall include provisions for such system to—

"(1) acquire current and past issues of periodicals, and to preserve and maintain a dedicated collection of such documents;

"(2) provide information on periodicals to which the system can insure access, including those circulated from private sector sources, and cooperate in efforts to improve bibliographic and physical access to periodicals;

"(3) make such periodicals available through libraries, by loan, photoreproduction or other means;

"(4) cooperate with and participate in international borrowing and lending activities as may be appropriate for such purposes;

"(5) ensure that copyright owners who do not wish to participate in such system are not required to participate;

"(6) ensure that copyright fees are fixed by the copyright owners for any reproduction or dissemination of a document delivered through the system;

"(7) complement and not duplicate activities in the private sector to provide access to periodical literature;

"(8) ensure, to the maximum extent feasible, that such system not adversely affect the publication and distribution of current periodicals, particularly scholarly periodicals of small circulation; and

"(9) ensure coordination with existing programs to distribute periodical literature, including programs of regional libraries and programs of interlibrary loan and library networks.

"(c) Any design shall include provisions for the role, if any, of the Corporation in the governance, administration, and operation of the system.

"(d) Any design shall be accompanied by an estimate of the cost for each fiscal year of carrying out the system proposed in the design.

"BOARD OF DIRECTORS

"SEC. 244. (a) The Corporation shall have a Board of Directors, consisting of fifteen members, including fourteen members appointed by the President, by and with the advice and consent of the Senate, and the Director of the Corporation.

"(b) The members of the Board appointed by the President shall be equitably representative of the needs and interests of the Government, academic and research communities, libraries, publishers, the information community, authors, and the public. Except for the initial Board of Directors, the members shall be appointed after consultation with the Board.

"(c) The members of the initial Board of Directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the laws of the jurisdiction in which it is incorporated.

"(d) The term of office for each member of the Board (other than the Director) shall be two years except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Notwithstanding the preceding provisions of this paragraph, a member whose term has expired may serve until his successor has taken office.

"(e)(1) The members of the Board shall not, by reason of membership, be deemed employees of the United States. Except as provided in paragraph (2), members shall, while engaged in activities of the Board, be entitled to receive compensation at the rate equal to the daily rate prescribed for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day and, while away from their homes or regular place of business, may be allowed travel expenses.

"(2) Members of the Corporation who are full-time officers and employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Corporation.

"(f) Eight members of the Board shall constitute a quorum.

"(g) The Board shall elect annually one of its members to serve as the Chairman.

"(h) The Board shall meet annually or at the call of the Chairman or a majority of its members.

"DIRECTOR AND STAFF OF CORPORATION

"SEC. 245. (a) The Corporation shall have a Director, and such other officers as appointed by the Board for the terms and at rates of compensation fixed by the Board. The Director shall manage the operations of the Corporation, subject to such rules as may be prescribed by the Board.

"(b) Subject to such rules as may be prescribed by the Board, the Director may appoint and fix the pay of personnel and may procure temporary and intermittent services.

"NONPROFIT NATURE OF CORPORATION

"SEC. 246. (a) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

"(b) No part of the incomes or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

"(c) The National Periodical System Corporation shall be exempt from taxation now or hereafter imposed by the United States, or any territory or possession thereof, or by any State, county, municipality, or local taxing authority.

"AUTHORITY OF CORPORATION

"SEC. 247. (a) The Corporation is authorized to—

> *"(1) obtain grants from and to make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;*
>
> *"(2) conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;*
>
> *"(3) lease, purchase, or otherwise acquire, own, hold, improve, use or otherwise deal in and with any property (real, personal, or mixed), or any interest therein, wherever situated;*
>
> *"(4) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets; and*
>
> *"(5) enter into contracts, execute instruments, incur liabilities, and do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.*

"(b) To carry out its functions and to engage in the activities described in subsection (a), the Corporation shall have the usual powers conferred upon a nonprofit corporation by the jurisdiction in which the Corporation is incorporated.

"(c) The Corporation may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States. The Administrator of General Services shall provide to the Corporation on a reimbursable basis such administrative support services as the Corporation may request.

"(d) The Corporation is authorized to accept, hold, administer, and use gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the authority of the Corporation pursuant to section 243. For the purpose of Federal income, estate, and gift taxes, property accepted by the National Periodical System Corporation shall be a gift, bequest, or devise to the United States.

"(e) The Corporation shall be subject to the provisions of section 552b of title 5, United States Code.

"IMPLEMENTING THE DESIGN

"SEC. 248. Any design established under this part shall be submitted to the Congress not later than December 31, 1981, and may not be implemented until the design is approved in whole or in part by enactment of a joint resolution of the Congress approving such design.

"COPYRIGHT ACT

"SEC. 249. Nothing in this part shall be considered to amend, affect, or redefine the provisions of title 17, United States Code, relating to copyrights.

"DEFINITIONS

"SEC. 250. As used in this part—

"(1) the term 'access' means the ability to identify, locate, and obtain a specific item (generally a periodical article), and includes both bibliographic access (the ability to identify a specific item from its description) and physical access to materials (the ability to obtain the text of an item in an appropriate form, such as visual, audio, or printed formats);

"(2) the term 'Board' means the Board of Directors of the National Periodical System Corporation;

"(3) the term 'comprehensive collection' means a collection of periodical titles which will provide access to approximately 90 per centum of the requests received, except that such titles need not all be physically located in the same place;

"(4) the term 'copyright owner' means the owner of any one of the exclusive rights comprised in a copyright;

"(5) the term 'Corporation' means the National Periodical System Corporation established under this part;

"(6) the term 'dedicated collection' means a collection of periodicals maintained for the sole purpose of assuring the provision of permanent physical access;

"(7) the term 'document' means any portion or the entire issue of a periodical;

"(8) the term 'periodical' means a publication consisting of issues in a continuous series under the same title published at regular or irregular intervals, over an indefinite period, individual issues in the series being numbered consecutively or each issue being dated; and

"(9) the term 'private sector' means nongovernmental, nonprofit, and for-profit organizations.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 251. (a) There are authorized to be appropriated, for the purpose of carrying out this part, $750,000 for each of fiscal years 1981 and 1982, and such sums as may be necessary for each of the fiscal years 1983, 1984, and 1985.

"(b) In any fiscal year after the joint resolution described in section 248 is enacted, there are authorized to be appropriated such additional sums as may be necessary to implement an approved design for any such fiscal year ending prior to October 1, 1985.".

TITLE III—ESTABLISHMENT OF A NEW TITLE III OF THE HIGHER EDUCATION ACT OF 1965

PROGRAMS AUTHORIZED

SEC. 301. Title III of the Act is amended to read as follows:

"TITLE III—INSTITUTIONAL AID

"FINDINGS AND PURPOSES

"SEC. 301. (a) The Congress finds that—

"(1) many institutions of higher education in this era of declining enrollments and scarce resources face problems which threaten their ability to survive;

"(2) the problems relate to the management and fiscal operations of certain institutions of higher education, as well as to an inability to engage in long-range planning, recruitment activities, and development activities;

"(3) the solution of the problems of these institutions would enable them to become viable, thriving institutions of higher education; and

"(4) these institutions play an important role in the American system of higher education, and there is a strong national interest in assisting them in solving their problems and in stabilizing their management and fiscal operations.

"(b) It is the purpose of this title to assist such institutions through a program of Federal assistance.

"PART A—STRENGTHENING INSTITUTIONS

"PROGRAM PURPOSE

"SEC. 311. (a) The Secretary shall carry out a program, in accordance with this part, to improve the academic quality, institutional management, and fiscal stability of eligible institutions, in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

"(b) From the sums available for this part under section 347(a)(1), the Secretary may award grants to any eligible institution with an application approved under section 341 in order to assist such an institution to plan, develop, or implement activities that promise to strengthen the institution. Special consideration shall be given to

applications which propose to engage in the following activities pursuant to the institution's plan:

"(1) faculty development;

"(2) funds and administrative management;

"(3) development and improvement of academic programs;

"(4) acquisition of equipment for use in strengthening funds management and academic programs;

"(5) joint use of facilities such as libraries and laboratories; and

"(6) student services.

"DEFINITIONS

"SEC. 312. For purposes of this part:

"(1) The term 'educational and general expenditures' means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation, and maintenance expenditures for physical plant, and any mandatory transfers which the institution is required to pay by law.

"(2) The term 'eligible institution' means—

"(A) an institution of higher education—

"(i)(I) which, in the case of an institution which awards a bachelor's degree, has an enrollment which includes a substantial percentage of students receiving awards under subpart 1 of part A of title IV, the average amount of which is high in comparison with the average amount of all grants awarded under such subpart to students at such institutions, and (II) which, in the case of junior or community colleges, has an enrollment which includes a substantial percentage of students receiving awards under subpart 1 of title IV, the average amount of which is high in comparison with the average amount of all grants awarded under such subpart to students at such institutions;

"(ii) except as provided in section 342(a), the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

"(iii)(I) is legally authorized to provide, and provides within the State, an educational program for which it awards a bachelor's degree, or (II) is a junior or community college;

"(iv) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation;

"(v) except as provided in section 342(b) has, during the five academic years preceding the academic year for which it seeks assistance under this part—

"(I) met the requirement of either clause (iii)(I) or (iii)(II), or of both such clauses (simultaneously or consecutively); and

"(II) met the requirement of clause (iv); and

"(vi) meets such other requirements as the Secretary may prescribe; or

"(B) any branch of any institution of higher education described under subparagraph (A) which by itself satisfies the requirements contained in clauses (i) and (ii) of such subparagraph.

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under subparagraph (A)(i) shall be given twice the weight of the factor described under subparagraph (A)(ii).

"(3) The term 'full-time equivalent students' means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve) at such institution.

"(4) The term 'junior or community college' means an institution of higher education—

"(A) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

"(B) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

"(C) that—

"(i) provides an educational program of not less than two years that is acceptable for full credit toward such a degree, or

"(ii) offers a two-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"DURATION OF GRANT

"SEC. 313. (a) The Secretary may award a grant to an eligible institution under this part for—

"(1) not to exceed three years, or

"(2) not less than four nor more than seven years,

subject for each fiscal year to the availability of appropriations therefor. The Secretary shall not accept the application of an eligible institution for a grant under both paragraphs (1) and (2) for a fiscal year.

"(b) The Secretary shall not award a grant under this part to an eligible institution that has, for any prior fiscal year, received a grant under subsection (a)(2).

"(c) Notwithstanding subsection (a), the Secretary may award a grant to an eligible institution under this part for a period of one year for the purpose of assisting such institution in the preparation of plans and applications under this part.

"PART B—AID TO INSTITUTIONS WITH SPECIAL NEEDS

"PROGRAM PURPOSE

"SEC. 321. (a) The purpose of this part is to provide for a program of short-term Federal assistance to strengthen the planning, management, and fiscal capabilities of institutions with special needs.

"(b) From the sums available for this part under section 347(a)(1), the Secretary may make grants to any institution with special needs with an application approved under section 341 in order to assist such an institution to plan, develop, or implement activities consistent with the purpose of this part. Such activities shall include—

"(1) faculty development;

"(2) funds and administrative management;

"(3) development and improvement of academic programs;

"(4) acquisition of equipment for use in strengthening funds management and academic programs;

"(5) joint use of facilities such as libraries and laboratories; and

"(6) student services.

"DEFINITIONS

"SEC. 322. (a) For purposes of this part:

"(1) The term 'educational and general expenditures' means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation, and maintenance expenditures of physical plant, and any mandatory transfers which the institution is required to pay by law.

"(2) The term 'institution with special needs' means—

"(A) an institution of higher education—

"(i)(I) which, in the case of an institution which awards a bachelor's degree, has an enrollment which includes a substantial percentage of students receiving need-based assistance under title IV of this Act, the average amount of which assistance is high in comparison with the average amount of all assistance provided under such title to students at such institutions, and (II) which, in the case of junior or community colleges, has an enrollment which includes a substantial percentage of students receiving need-based assistance under title IV, the average amount of which assistance is high in comparison with the average amount of all assistance provided under such title to students at such institutions, and

"(ii) except as provided in section 342(a), the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in

comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

"(iii)(I) is legally authorized to provide, and provides within the State, an educational program for which it awards a bachelor's degree, or (II) is a junior or community college;

"(iv) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation;

"(v) except as provided in section 342(b) has, during the five academic years preceding the academic year for which it seeks assistance under this part—

"(I) met the requirement of either clause (iii)(I) or (iii)(II), or of both such clauses (simultaneously or consecutively); and

"(II) met the requirement of clause (iv);

"(vi) has an enrollment of not less than 100 full-time equivalent students in the academic year for which the determination is made; and

"(vii) meets such other requirements as the Secretary may prescribe; or

"(B) any branch of any institution of higher education described under subparagraph (A) which by itself satisfies the requirements contained in clauses (i), (ii), and (vi) of such subparagraph and which is located in a community different from that in which its parent institution is located.

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under subparagraph (A)(i) shall be given the same weight as the factor described under subparagraph (A)(ii), and the Secretary may also consider the factors specified under subsection (b) of this section.

"(3) The term 'full-time equivalent students' means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time at such institution (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve).

"(4) The term 'junior or community college' means an institution of higher education—

"(A) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

"(B) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

"(C) that—

"(i) provides an educational program of not less than two years that is acceptable for full credit toward such a degree, or

"(ii) offers a two-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"(b) In determining whether an institution is an institution with special needs under subsection (a)(2), the Secretary may also consider the following factors:

"(1) extreme financial limitations requiring low faculty salaries, low costs of instruction for students, and low library expenditures;

"(2) a little or no endowment, whether or not unrestricted;

"(3) a high student to faculty ratio;

"(4) a substantial percentage of students receiving need-based Federal student assistance;

"(5) limited library resources;

"(6) a low percentage of faculty with doctorate degrees;

"(7) poor physical facilities and limited resources to maintain physical facilities,

"(8) little or no support from foundations, alumni, or corporations;

"(9) limited or no sponsored research or faculty publications;

"(10) inadequate development offices and a limited capacity for long-range planning; and

"(11) poor or inadequate fiscal management and accounting procedures.

"DURATION OF GRANT

"SEC. 323. The Secretary may make a grant to any institution with special needs under this part for a period of not more than five years. A grant to enhance the planning capabilities of an institution shall not exceed one year.

"FEDERAL SHARE

"SEC. 324. The Federal share of the cost of grants made to institutions with special needs under this part shall be 100 per centum for the first two years in which an institution receives a grant, 90 per centum for the third year an institution receives a grant, 80 per centum for the fourth year an institution receives a grant, and 70 per centum for the fifth year an institution receives a grant.

"PART C—CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B

"ESTABLISHMENT OF CHALLENGE GRANT PROGRAM

"SEC. 331. (a)(1) From the sums available under section 347(a)(2) for each fiscal year, the Secretary may award a challenge grant to each institution—

"(A) which is an eligible institution under part A or would be considered to be such an institution if section 312(2)(A)(iii) referred to a postgraduate degree rather than a bachelor's degree; or

"(B) which is an institution with special needs under part B or would be considered to be such an institution if section 322(a)(2)(A)(iii) referred to a postgraduate degree rather than a bachelor's degree.

"(2) The Secretary may waive the requirements set forth in subparagraphs (A) and (B) of paragraph (1) with respect to a postgraduate degree in the case of any institution otherwise eligible under such paragraph for a challenge grant upon determining that the institution makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged.

"(b) The Secretary may make a grant under this section for a period of not more than 5 years. A grant under this section may be used for the programs and activities described in part A or part B, as the case may be.

"APPLICATIONS FOR CHALLENGE GRANTS

"SEC. 332. (a) Any institution eligible for a challenge grant under section 331(a) may apply for such a grant under section 341, except that the application for the purpose of this part shall—

"(1) provide evidence that funds are available to the applicant to match funds that the Secretary is requested to make available to the institution as a challenge grant;

"(2) in the case of an application by a public institution, contain the recommendations of an appropriate State agency responsible for higher education in the State, or provide evidence that the institution requested the State agency to comment but the State agency failed to comment; and

"(3) in the case of an application by an institution described under section 331(a)(1)(B), demonstrate how challenge grant funds will be used to eradicate the conditions enumerated in section 322(b)(1) through (11), and lead to greater financial independence.

"(b) Not later than April 1 of the fiscal year preceding the fiscal year in which any grant is to be made under this part, the Secretary shall determine which institutions will receive challenge grants under this part and notify the institutions of the amount of the grant.

"(c) In approving applications for grants under this part, preference shall be given to institutions which are receiving, or have received, grants under part A or part B.

"PART D—GENERAL PROVISIONS

"APPLICATIONS FOR ASSISTANCE

"SEC. 341. (a) Any institution which is eligible for assistance under this title may submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate its need for assistance. Subject to the availability of appropriations to carry out this title, the Secretary may approve an application for a grant under this title if the application meets the requirements of subsection (b) and shows that the applicant is eligible for assistance in accordance with the part of this title under which the assistance is sought.

"(b) An institution, in its application for a grant, shall—

"(1) set forth, or describe how it will develop, a comprehensive development plan to strengthen the institution's academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this title);

"(2) set forth policies and procedures to ensure that Federal funds made available under this title for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 311(b) or 321(b), and in no case supplant those funds;

"(3) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this title;

"(4) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this title;

"(5) provide for making such reports, in such form and containing such information, as the Secretary may require to carry out his functions under this title (including not less than one report annually setting forth the institution's progress toward achieving the objectives for which the funds were awarded), and for keeping such records and affording such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports;

"(6) provide that the institution will comply with the limitations set forth in section 346;

"(7) include such other information as the Secretary may prescribe; and

"(8) describe in a comprehensive manner any development project for which funds are sought under the application and include—

"(A) a description of the various components of the development project, including the estimated time required to complete each such component;

"(B) in the case of any development project which consists of several components (as described by the applicant pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be

sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this title in conjunction with other parts of the development project (as specified by the applicant);

"(C) an evaluation by the applicant of the priority given any development project for which funds are sought in relation to any other projects for which funds are sought by the applicant under this title, and a similar evaluation regarding priorities among the components of any single development project (as described by the applicant pursuant to subparagraph (A));

"(D) in the case of a request for an award for a period of more than one year, a statement of reasons explaining why funds are necessary for each year of such period and why a single year award would be inadequate;

"(E) information explaining the manner in which the development project will assist the applicant to prepare for the critical financial problems that all institutions of higher education will face during the subsequent decade as a result of declining enrollment, increased energy costs, and other problems;

"(F) a detailed budget showing the manner in which funds for any development project would be spent by the applicant; and

"(G) a detailed description of any activity which involves the expenditure of more than $25,000, as identified in the budget referred to in subparagraph (F).

"WAIVER AUTHORITY AND REPORTING REQUIREMENT

"SEC. 342. (a)(1) The Secretary may waive the requirements set forth in section 312(2)(A)(ii) or section 322(a)(2)(A)(ii) if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A or as an institution with special needs under part B (as the case may be) is otherwise consistent with the purposes of such parts.

"(2) The Secretary shall submit to the Congress each year a report concerning the institutions which, although not satisfying the criterion contained in section 312(2)(A)(ii) or section 322(a)(2)(A)(ii), have been determined to be eligible institutions under part A or institutions with special needs under part B, as the case may be. Such report shall—

"(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with section 312(2)(A)(ii) or section 322(a)(2)(A)(ii), as the case may be; and

"(B) contain a list of each institution determined to be an eligible institution under part A or as an institution with special needs under part B and include a statement of the reasons for each such determination.

"(b) The Secretary may waive the requirement set forth in sections 312(2)(v) and 322(a)(2)(v) in the case of an institution—

"(1) located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians;

"(2) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Spanish-speaking people;

"(3) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of individuals living in rural areas, whose needs are for the most part unserved by other postsecondary education institutions;

"(4) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of low-income individuals; or

"(5) wherever located, if the Secretary determines that the institution has traditionally served substantial numbers of black students.

"APPLICATION REVIEW PROCESS

"SEC. 343. (a)(1) All applications submitted under this title by institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary. The Secretary shall ensure that no individual assigned under this section to review any application has any conflict of interest with regard to the application which might impair the impartiality with which the individual conducts the review under this section.

"(2) All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this title and consistent with the provisions of this title, including—

"(A) explanations and examples of the types of activities referred to in section 311(b) that should receive special consideration for grants awarded under part A and of the types of activities referred to in section 321(b) that should receive special consideration for grants awarded under part B;

"(B) an enumeration of the factors to be used to determine the quality of applications submitted under this title; and

"(C) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this title, the amount of any such grant, and the duration of any such grant.

"(b) In awarding grants under this title, the Secretary shall take into consideration the recommendations of the panel made under subsection (a).

"(c) Not later than June 30 of each year, the Secretary shall notify each institution of higher education making an application under this title of—

"(1) the scores given the applicant by the panel pursuant to this section,

"(2) the recommendations of the panel with respect to such application, and

"(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this title, and any modifica-

tions, if any, in the recommendations of the panel made by the Secretary.

"COOPERATIVE ARRANGEMENTS

"SEC. 344. (a) The Secretary may make grants to encourage cooperative arrangements—

"(1) with funds available to carry out part A, between institutions eligible for assistance under part A; or

"(2) with funds available to carry out part B, between institutions eligible for assistance under part B;

for the activities described in section 311(b) or section 321(b), as the case may be, so that the resources of the cooperating institutions might be combined and shared to achieve the purposes of such parts and avoid costly duplicative efforts.

"(b) The Secretary shall give priority to grants for the purposes described under subsection (a) whenever the Secretary determines that the cooperative arrangement is geographically and economically sound.

"(c) Grants to institutions having a cooperative arrangement may be made under this section for a period as determined under section 313 or 323, as the case may be.

"ASSISTANCE TO INSTITUTIONS UNDER OTHER PROGRAMS

"SEC. 345. (a) Each institution which the Secretary determines to be an eligible institution under part A or an institution with special needs under part B shall be eligible for waivers in accordance with subsection (b).

"(b)(1) Subject to, and in accordance with, regulations promulgated for the purpose of this section, in the case of any application by an institution referred to in subsection (a) for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.

"(2) The provisions of this section shall apply to any program authorized by title II, IV, VII, or VIII of this Act.

"(c) The Secretary shall not waive, under subsection (b), the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 per centum of the appropriations for the program for any fiscal year.

"LIMITATIONS

"SEC. 346. The funds appropriated under section 347 may not be used—

"(1) for a school or department of divinity or any religious worship or sectarian activity;

"(2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution;

"(3) for an activity that is inconsistent with a State plan of higher education applicable to such institution; or

"(4) for purposes other than those set forth in the approved application under which the funds were made available to the institution.

"AUTHORIZATIONS

"SEC. 347. (a)(1) There are authorized to be appropriated to carry out parts A and B $160,000,000 for the fiscal year 1981, $185,000,000 for the fiscal year 1982, $210,000,000 for the fiscal year 1983, $245,000,000 for the fiscal year 1984, and $280,000,000 for the fiscal year 1985. Of the amounts appropriated under this paragraph for each fiscal year, 50 per centum shall be made available to carry out part A and 50 per centum shall be made available to carry out part B.

"(2) There are authorized to be appropriated to carry out part C $25,000,000 for the fiscal year 1982, $35,000,000 for the fiscal year 1983, $45,000,000 for the fiscal year 1984, and $50,000,000 for the fiscal year 1985.

"(b) In the event of a multiple year award to any institution under this title, the Secretary shall make funds available for such award from funds appropriated for this title for the fiscal year in which such funds are to be used by the recipient.

"(c)(1) Of the sums appropriated under subsection (a)(1) for any fiscal year for part A, the Secretary shall make available to use for the purposes of each such part—

"(A) not less than 24 per centum to institutions that are junior or community colleges, and

"(B) the remainder to institutions that plan to award a bachelor's degree during that year.

"(2) Of the sums appropriated under subsection (a)(1) for any fiscal year for part B, the Secretary shall make available to use for the purposes of each such part—

"(A) not less than 30 per centum to institutions that are junior or community colleges, and

"(B) the remainder to institutions that plan to award a bachelor's degree during that year.

"(d) Of the sums appropriated under subsection (a)(1) for the purpose of part A for any fiscal year, the Secretary shall make available not less than 25 per centum for grants under section 313(a)(2). Any funds made available under this subsection for such grants which are not expended during the fiscal year for which such funds were appropriated shall remain available for expenditure for the purpose of making such grants during subsequent fiscal years.

"(e) The Secretary shall assure that in each fiscal year the amount available under part B for institutions with special needs that historically serve substantial numbers of black students will not be less than 50 per centum of the amount received by such institutions for fiscal year 1979.".

TITLE IV—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

STATEMENT OF PURPOSE

SEC. 401. Section 401(a) of the Act is amended—

(1) by striking out "qualified students" and inserting in lieu thereof "eligible students (defined in accordance with section 484)"; and

(2) by striking out "of exceptional need who, for lack of such a grant, would be unable to obtain the benefits of a postseondary education" in paragraph (2) and inserting in lieu thereof "who demonstrate financial need".

PELL GRANTS

SEC. 402. (a) Section 411(a)(1) of the Act is amended to read as follows:

"SEC. 411. (a)(1)(A) The Secretary shall, during the period beginning July 1, 1972, and ending September 30, 1985, pay to each eligible student (defined in accordance with section 484) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a basic grant in the amount for which that student is eligible, as determined pursuant to paragraph (2).

"(B) The purpose of this subpart is to provide a basic grant that (i) as determined under paragraph (2), will meet in academic year 1985–1986, 70 per centum of a student's cost of attendance not in excess of $3,700; and (ii) in combination with reasonable parental or independent student contribution and supplemented by the programs authorized under subparts 2 and 3 of this part, will meet 75 per centum of a student's cost of attendance, unless the institution determines that a greater amount of assistance would better serve the purposes of section 401.

"(C) Basic grants made under this subpart shall be known as 'Pell Grants'.".

(b)(1) Section 411(a)(2)(A)(i) of the Act is amended to read as follows:

"(2)(A)(i) The amount of the basic grant for a student eligible under this part shall be—

"(I) $1,900 for academic year 1981–1982,
"(II) $2,100 for academic year 1982–1983,
"(III) $2,300 for academic year 1983–1984,
"(IV) $2,500 for academic year 1984–1985, and
"(V) $2,600 for academic year 1985–1986,

less an amount equal to the amount determined under section 482 to be the expected family contribution with respect to that student for that year.".

(2) Section 411(a)(2)(A)(ii) of this Act is amended by striking out "February 1 of each year" and inserting in lieu thereof "January 1, 1981, October 1, 1981, and on October 1 of each succeeding year".

(c)(1) Section 411(a)(2)(B)(i) of the Act is amended to read as follows:

"(B)(i) The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed—

"(I) 50 per centum of the cost of attendance (as defined under section 482(d)) at the institution at which the student is in attendance for that year, when the maximum grant is less than or equal to $1,900;

"(II) 55 per centum of such cost of attendance when the maximum basic grant is more than $1,900 but is less than $2,100;

"(III) 60 per centum of such cost of attendance when the maximum basic grant is at least $2,100 but is less than $2,300;

"(IV) 65 per centum of such cost of attendance when the maximum basic grant is at least $2,300 but is less than $2,600; and

"(V) 70 per centum of such cost of attendance when the maximum basic grant is $2,600.".

(2) Section 411(a)(2)(B)(ii) of the Act is amended by striking out "actual" each time it appears.

(3) Section 411(a)(2)(B)(iv) of the Act is repealed.

(d)(1) Section 411(a)(3) of the Act is repealed.

(2) Paragraph (4) of section 411(a) of the Act is redesignated as paragraph (3).

(e) Section 411(a)(3) of the Act (as redesignated by subsection (d)(2)) is amended to read as follows:

"(3) The period during which a student may receive basic grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance. Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature which are determined by the institution as necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree.".

(f) Section 411(b)(3)(B)(i) of the Act is amended to read as follows:

"(B)(i) If, during any period of any fiscal year, the funds available for payments under this subpart are insufficient to satisfy fully all entitlements, the amount paid with respect to each such entitlement, as calculated prior to the cost of attendance limitation provided in section 411 (a)(2)(B)(i) under this subpart, shall be—

"(I) the full amount in the case of any student's eligibility index which is less than 601;

"(II) 90 per centum of the amount when the student's eligibility index is 601 but less than 801;

"(III) 80 per centum of the amount when the student's eligibility index is 801 but less than 1001;

"(IV) 70 per centum when the student's eligibility index is 1001 but less than 1201;

"(V) 60 per centum when the student's eligibility index is 1201 but less than 1601; and

"(VI) 50 per centum when the student's eligibility index is 1601 or greater.

For the purpose of this division, a 'student's eligibility index' is the index of need of a student established by the Secretary in carrying out section 482, relating to the family contribution schedule.".

(g) Section 411(b)(5) of the Act is amended to read as follows:

"(5)(A) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $370,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not at least equal $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount deposited in such funds pursuant to section 463(a)(2) (A), (B), (D), (E), and (F) which was available for student loans during the preceding fiscal year,

no payment may be made in excess of $1,800 on the basis of entitlements established under this subpart in excess of such amount.

"(B) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $400,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not at least equal $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount deposited in such funds pursuant to section 463(a)(2) (A), (B), (D), (E), and (F) which was available for student loans during the preceding fiscal year,

no payment may be made in excess of $1,899 on the basis of entitlements established under this subpart in excess of such amount.

"(C) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $440,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not at least equal $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount deposited in such funds pursuant to section 463(a)(2) (A), (B), (D), (E), and (F) which was available for student loans during the preceding fiscal year,

no payment may be made in excess of $2,099 on the basis of entitlements established under this subpart in excess of such amount.

"(D) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $460,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not at least equal $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and 468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount deposited in such funds pursuant to section 463(a)(2) (A), (B), (D), (E), and (F) which was available for student loans during the preceding fiscal year,

no payment may be made in excess of $2,299 on the basis of entitlements established under this subpart in excess of such amount.

"(E) For any fiscal year ending prior to October 1, 1985, if—

"(i) the appropriation for making grants under subpart 2 of this part for that fiscal year does not at least equal $480,000,000,

"(ii) the appropriation for State student incentive grants under subpart 3 of this part for that fiscal year does not at least equal $76,750,000,

"(iii) the appropriation for work-study payments under section 441 of this title for that fiscal year does not equal at least $550,000,000, and

"(iv)(I) the amount available for Federal capital contributions to student loan funds for that fiscal year from funds appropriated under section 461 does not at least equal $286,000,000, (II) the sum of the amounts available under both sections 461 and

468 for Federal capital contributions to student loan funds for that fiscal year does not at least equal $286,000,000, or (III) the amount available under section 468 is not sufficient to provide Federal capital contributions to such funds for that fiscal year in an amount which equals or exceeds the total amount deposited in such funds pursuant to section 463(a)(2) (A), (B), (D), (E), and (F) which was available for student loans during the preceding fiscal year,

no payment may be made equal to or in excess of $2,500 on the basis of entitlements established under this subpart which are equal to or in excess of such amount.".

(h) Subsections (d) and (e) of section 411 of the Act are repealed.

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

SEC. 403. (a) Section 413A(a) of the Act is amended by striking out "who, for lack of financial means, would be unable to obtain such benefits without such a grant" and inserting in lieu thereof "who demonstrate financial need in accordance with the provisions of section 482".

(b)(1) The first sentence of section 413A(b)(1) of the Act is amended by inserting before the period a comma and the following: "and $400,000,000 for the fiscal year 1981, and for each of the succeeding fiscal years ending prior to October 1, 1985".

(2) Section 413A(b)(3) of the Act is amended by inserting "second" before "fiscal year" the second time it appears in such section.

(c)(1) Section 413B(a)(2)(A) of the Act is amended to read as follows:

"(2)(A) The amount of the payment to any student pursuant to paragraph (1) shall be equal to the amount determined by the institution, in accordance with the provisions of section 482, to be needed by that student to enable him to pursue a course of study at the institution, except that such amount shall not exceed $2,000.".

(2) Section 413B(a)(2)(B) of the Act is amended by adding at the end thereof the following new sentence: "For a student enrolled for less than a full academic year, the minimum payment required shall be reduced proportionately.".

(3) Section 413B(a)(2) of the Act is further amended by striking out subparagraph (C).

(4) Section 413B(b) of the Act is amended to read as follows:

"(b)(1) The period during which a student may receive supplemental grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance.

"(2) A supplemental grant awarded under this subpart shall entitle the student to whom it is awarded to payments pursuant to such grant only if the student meets the requirements of section 484, except as provided in section 413C(c).".

(d) Section 413C of the Act is amended to read as follows:

"SELECTION OF RECIPIENTS; AGREEMENTS WITH INSTITUTIONS

"SEC. 413C. (a) An individual shall be eligible for the award of a supplemental grant under this subpart by an institution of higher education which, in accordance with section 487, has an agreement

with the Secretary applicable to this subpart, if the individual makes application at a time and in a manner consistent with the requirements of the Secretary and that institution, and meets the requirements of section 484.

"(b) From among individuals who are eligible for supplemental grants for each fiscal year, the institution shall, in accordance with the agreement under section 487, and within the amount allocated to the institution for that purpose for that year under section 413D(b), select individuals who are to be awarded such grants and determine, in accordance with section 413B, the amounts to be paid to them.

"(c) An eligible institution may use not more than 10 per centum of its allocation for less-than-half-time undergraduate students who are determined by the institution to be in need of such grants and who meet the requirements of section 484, other than the requirement of clause (2) of section 484(a).".

(e)(1) Section 413D(a)(1) of the Act is amended by striking out "persons" each place it appears and inserting in lieu thereof "undergraduates".

(2) Section 413D(a)(2) is amended by striking out "section 431A(b)(2)" and inserting in lieu thereof "section 413A(b)(2)".

(3) Section 413D(b)(1)(B)(ii) of the Act is amended to read as follows:

"(ii) Allocations under division (i) by the Secretary to such institutions shall be made in accordance with a formula which determines institutional need for funds under this subpart by subtracting from 75 per centum of total student expenses the sum of expected family or independent student contributions, awards made under subparts 1 and 3 of this part, and 25 per centum of grants and awards made by the institution from its own resources. In addition, the Secretary, in establishing equitable criteria, shall not issue any regulation which has the effect of penalizing institutions that under existing State law must provide scholarships or grant assistance from their own funds and yet are not free under laws in effect on January 1, 1979, either to select the recipients of such assistance or to adjust the criteria by which the recipients are selected. The formula established under this division shall not result in any institution receiving an amount less than—

"(I) 100 per centum of the amount such institution received and used under this section for fiscal year 1979 in the case of any fiscal year for which the appropriation for this part is less than $400,000,000;

"(II) 80 per centum of such amount in the case of any fiscal year for which such appropriation is at least $400,000,000 but less than $420,000,000;

"(III) 60 per centum of such amount in the case of any fiscal year for which such appropriation is at least $420,000,000 but less than $440,000,000;

"(IV) 40 per centum of such amount in the case of any fiscal year for which such appropriation is at least $440,000,000 but less than $460,000,000; or

"(V) 20 per centum of such amount in the case of any fiscal year for which such appropriation is at least $460,000,000 but less than $480,000,000.".

(4) Section 413D(b)(2) of the Act is amended by adding at the end thereof the following new sentence: "Such allocation shall be made in accordance with the formula prescribed by regulation under division (ii) of paragraph (1)(B) of this subsection.".

(f) Section 413D(b) of the Act is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) Each institution receiving allocations under this subsection from apportionments made to the State under subsection (a)(1) and under subsection (a)(2) may use its allocations for initial supplemental grants and for continuing supplemental grants in such manner as the institution determines will best achieve the purposes of this subpart.".

GRANTS TO STATES FOR STATE STUDENT INCENTIVES

SEC. 404. (a) Section 415A of the Act is amended to read as follows:

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 415A. (a) It is the purpose of this subpart to make incentive grants available to the States to assist them in providing grants to eligible students attending institutions of higher education.

"(b)(1) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1981 and 1982, $150,000,000 for fiscal year 1983, $200,000,000 for fiscal year 1984, and $250,000,000 for fiscal year 1985, for payments to the States for grants to eligible students under this subpart.

"(2) Sums appropriated pursuant to paragraph (1) for any fiscal year shall remain available for payments to States for the award of student grants under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated.".

(b) Section 415C of the Act is amended—

(1) in subsection (a), by striking out "shall submit" and inserting in lieu thereof "shall have a State agreement pursuant to section 1203 and shall submit";

(2) in subsection (b)(1), by inserting "under section 1203" immediately after "agency";

(3) in subsection (b)(2), by striking out "$1,500" and inserting in lieu thereof "$2,000", and by striking out "as an undergraduate";

(4) in subsection (b)(4), by inserting immediately before the semicolon at the end thereof the following: "or in any State in which participation of nonprofit institutions of higher education is in violation of a statute of the State which was enacted prior to October 1, 1978"; and

(5) in subsection (b), by striking out "and" at the end of clause (5), by redesignating clause (6) as clause (8), and by inserting after clause (5) the following new clauses:

"(6) provides that institutions of higher education, with the approval of the State agency, may use any proportion of the payments received in any fiscal year for grants to otherwise eligible students who fail to meet the requirement of section 484(a)(2);

"(7) provides for State expenditures under such program of an amount not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years; and".

(c) Section 415E of the Act is repealed.

SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS

SEC. 405. Subpart 4 of part A of title IV of the Act is amended to read as follows:

"SUBPART 4—SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS

"PROGRAM AUTHORITY; AUTHORIZATION OF APPROPRIATIONS

"SEC. 417A. (a) The Secretary shall, in accordance with the provisions of this subpart, carry out a program of making grants and contracts designed to identify qualified individuals from disadvantaged backgrounds, to prepare them for a program of postsecondary education, to provide special services for such students who are pursuing programs of postsecondary education, and to train persons serving or preparing for service in programs and projects so designed.

"(b)(1) For the purposes described in subsection (a), the Secretary is authorized, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), to make grants to, and contracts with, institutions of higher education, public and private agencies and organizations, and, in exceptional circumstances, secondary schools for planning, developing, or carrying out one or more of the services assisted under this subpart.

"(2) In making grants and contracts under this subpart, the Secretary shall consider the prior experience of service delivery under the particular program for which funds are sought by each applicant.

"(c) For the purpose of making grants and contracts under this subpart there are authorized to be appropriated $400,000,000 for fiscal year 1981 and such sums as may be necessary for each of the succeeding fiscal years ending prior to October 1, 1985.

"(d) For the purposes of this subpart—

"(1) the term 'first generation college student' means a person neither of whose parents completed a baccalaureate degree; and

"(2) the term 'low-income individual' means an individual from a family whose taxable income for the preceding year did not exceed 150 per centum of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

"(e) No individual who is an eligible veteran, as that term is defined by section 1652(a) of title 38, United States Code, shall be deemed ineligible to participate in any program under this subpart by reason of such individual's age.

"TALENT SEARCH

"SEC. 417B. (a) The Secretary shall carry out a program to be known as talent search which shall be designed—

"(1) to identify qualified youths with potential for education at the postsecondary level and to encourage such youth to complete secondary school and to undertake a program of postsecondary education;

"(2) to publicize the availability of student financial assistance available to persons who pursue a program of postsecondary education; and

"(3) to encourage persons who have not completed programs of education at the secondary or postsecondary level, but who have the ability to complete such programs, to reenter such programs.

"(b) A talent search project assisted under this subpart may include, in addition to the services described in paragraphs (1), (2), and (3) of subsection (a), tutorial services for youths being encouraged to undertake or reenter programs of postsecondary education if such tutorial services are not otherwise available to such youths through a project assisted under this subpart.

"(c) In approving applications for talent search projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require that such participants be persons who either have completed six years of elementary education or are at least twelve years of age but not more than twenty-seven years of age, unless the imposition of any such limitation with respect to any person would defeat the purposes of this section or the purposes of section 417E; and

"(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 417E.

"(d) In approving applications for talent search projects under this subpart for any fiscal year, the Secretary shall require assurances that the project will be located in a setting accessible to the persons proposed to be served by the project.

"UPWARD BOUND

"SEC. 417C. (a) The Secretary shall carry out a program to be known as upward bound which shall be designed to generate skills and motivation necessary for success in education beyond high school.

"(b) Any upward bound project assisted under the subpart may provide services such as—

"(1) instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

"(2) personal counseling;

"(3) academic advice and assistance in high school course selection;

"(4) tutorial services;

"(5) exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

"(6) activities designed to acquaint youths participating in the project with the range of career options available to them;

"(7) instruction designed to prepare youths participating in the project for careers in which persons from disadvantaged backgrounds are particularly underrepresented;

"(8) on-campus residential programs; and

"(9) programs and activities as described in paragraphs (1) through (8) which are specially designed for students of limited English proficiency.

"(c) In approving applications for upward bound projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require an assurance that the remaining youths participating in the project proposed to be carried out under any application be either low-income individuals or be first generation college students;

"(3) require that there be determination, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond high school; and

"(4) require that such participants be persons who have completed eight years of elementary education and are at least thirteen years of age but not more than nineteen years of age, unless the imposition of any such limitation would defeat the purposes of this section.

"(d) Youths participating in a project proposed to be carried out under any application may be paid stipends not in excess of $60 per month during June, July, and August, and not in excess of $40 per month during the remaining period of the year.

"SPECIAL SERVICES FOR DISADVANTAGED STUDENTS

"SEC. 417D. (a) The Secretary shall carry out a program to be known as special services for disadvantaged students (hereinafter referred to as 'special services') which shall be designed to provide supportive services to persons participating in the projects.

"(b) A special services project assisted under this subpart may provide services such as—

"(1) instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

"(2) personal counseling;

"(3) academic advice and assistance in course selection;

"(4) tutorial services;

"(5) exposure to cultural events and academic programs not usually available to disadvantaged students;

"(6) activities designed to acquaint students participating in the project with the range of career options available to them;

"(7) activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs; and

"(8) programs and activities as described in paragraphs (1) through (7) which are specially designed for students of limited English proficiency.

"(c) In approving applications for special services projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application—

"(A) be physically handicapped, or

"(B) be low-income individuals who are first generation college students;

"(2) require an assurance that the remaining students participating in the project proposed to be carried out under any application either be low-income individuals, first generation college students, or physically handicapped;

"(3) require that there be a determination, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond high school; and

"(4) require that such participants be enrolled or accepted for enrollment at the institution which is the recipient of the grant or contract.

"(d) In approving applications for special services projects under this subpart for any fiscal year, the Secretary shall require an assurance from the institution which is the recipient of the grant or contract that each student enrolled in the project will receive sufficient financial assistance to meet that student's full financial need.

"EDUCATIONAL OPPORTUNITY CENTERS

"SEC. 417E. (a) The Secretary shall carry out a program of paying up to 75 per centum of the cost of establishing and operating programs to be known as educational opportunity centers which shall be designed—

"(1) to provide information with respect to financial and academic assistance available for individuals desiring to pursue a program of postsecondary education; and

"(2) to provide assistance to such persons in applying for admission to institutions at which a program of postsecondary education is offered, including preparing necessary applications for use by admissions and financial aid officers.

"(b) An educational opportunity center assisted under this subpart may provide, in addition to the services described in clauses (1) and (2) of subsection (a), tutorial and counseling services for persons participating in the project if such tutorial and counseling services are not otherwise available through a project assisted under this subpart.

"(c) In approving applications for educational opportunity centers under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require that such participants be persons who are at least nineteen years of age, unless the imposition of such limitation

with respect to any person would defeat the purposes of this section or the purposes of section 417B; and

"(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 417B.

"STAFF DEVELOPMENT ACTIVITIES

"SEC. 417F. For the purpose of improving the operation of the programs and projects authorized by this subpart, the Secretary is authorized to make grants to institutions of higher education and other public and private nonprofit institutions and organizations to provide training for staff and leadership personnel employed in, or preparing for employment in, such programs and projects. Such training shall include conferences, internships, seminars, and workshops designed to improve the operation of such programs and projects and shall be carried out in the various regions of the Nation in order to ensure that the training opportunities are appropriate to meet the needs in the local areas being served by such programs and projects. Grants for the purposes of this section shall be made only after consultation with regional and State professional associations of persons having special knowledge with respect to the needs and problems of such programs and projects.".

SPECIAL PROGRAM FOR MIGRANT AND SEASONAL FARMWORK STUDENTS

SEC. 406. Subpart 5 of part A of title IV of the Act is amended to read as follows:

"SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK

"SEC. 418A. (a) The Secretary shall maintain and expand existing secondary and postsecondary high school equivalency program and college assistance migrant program projects, which shall be designed to provide services to students of families who are engaged in migrant and seasonal farmwork. The services authorized by this subpart include—

"(1) instruction in reading, writing, study skills, mathematics, communication skills, and other subjects necessary for success beyond high school, and in preparation for the examination for a certificate of high school equivalency;

"(2) personal and academic counseling;

"(3) outreach and recruitment, special admissions, and financial assistance;

"(4) tutorial services;

"(5) career-oriented work study;

"(6) housing support and on-campus residential programs;

"(7) activities designed to acquaint youths participating in the project with the range of career options available to them;

"(8) exposure to cultural events, academic programs and other activities not usually available to migrant youth; and

"(9) other essential supportive services, as needed to ensure the success of eligible migrant and seasonal farmwork students at the secondary and postsecondary levels.

"(b) There is authorized to be appropriated $9,600,000 for the fiscal year 1981, $12,000,000 for the fiscal year 1982, $14,000,000 for the fiscal year 1983, $16,000,000 for the fiscal year 1984, and $18,000,000 for the fiscal year 1985, to carry out the provisions of this subpart.".

VETERANS' COST-OF-INSTRUCTION PAYMENTS

SEC. 407. Section 420 of the Act is amended to read as follows:

"VETERANS' COST-OF-INSTRUCTION PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

"SEC. 420. (a)(1) During the period beginning July 1, 1972, and ending September 30, 1985, each institution of higher education shall be entitled to a payment under, and in accordance with, this section during any fiscal year if—

"(A) the number of persons who are veterans receiving vocational rehabilitation under chapter 31 of title 38, United States Code, or veterans receiving educational assistance under chapter 34 of such title, and who are in attendance as undergraduate students at such institution during any academic year, equals at least—

"(i) 110 per centum of the number of such recipients who were in attendance at such institution during the preceding academic year, or

"(ii) 10 per centum of the total number of undergraduate students in attendance at such institution during such academic year and if such number does not constitute a per centum of such undergraduate students which is less than such per centum for the preceding academic year; and

"(B) the number of such persons is at least 25.

"(2) With respect to any academic year ending on or before September 30, 1986, each institution which has qualified for payment under this section for the preceding year shall be entitled during such academic year, notwithstanding the provisions of paragraph (1)(A), to a payment under this section if—

"(A) the number of persons referred to in paragraph (1) equals at least the number which bears the same ratio to the number of such recipients who were in attendance at such institution during the first academic year in which the institution was entitled to payments under this section as the number of such recipients in all institutions of higher education during the academic year for which the determination is made bears to the number of such recipients in all institutions of higher education for the first such academic year; or

"(B) in the event that subparagraph (A) of this paragraph is not satisfied, the Secretary determines, on the basis of evidence presented by such institution, that such institution is making reasonable efforts, taking into consideration the extent to which the number of persons referred to in such paragraph (1) falls short of meeting the ratio criterion set forth in such subpara-

graph (A), to continue to recruit, enroll, and provide necessary services to veterans.

"(3) For any fiscal year beginning after September 30, 1980, the Secretary may waive the provisions of paragraph (1) of this subsection for any institution of higher education which has qualified for payment under this section for any preceding fiscal year but subsequently became ineligible, if—

"(A) the institution would have been eligible had section 420(a)(2) been in effect when such institution became ineligible,

"(B) the institution has had a full-time office of veterans' affairs since that institution was so eligible, and

"(C) the appropriations made available in any such fiscal year for this section are in excess of (i) $14,380,000, or (ii) the amount requested for carrying out this section in the budget of the President submitted under section 201 of the Budget and Accounting Act, 1921, whichever is greater, by an amount sufficient to make payments to all institutions meeting the requirements of clauses (A) and (B) of this paragraph.

"(b)(1) The amount of the payment to which any institution shall be entitled under this section for any fiscal year shall be—

"(A) $300 for each person who is a veteran receiving vocational rehabilitation under chapter 31 of title 38, United States Code, or a veteran receiving educational assistance under chapter 34 of such title 38, and who is in attendance at such institution as an undergraduate student during such year; and

"(B) in addition, $150 for each person who is in attendance at such institution as an undergraduate student during such year and who has been the recipient of educational assistance under subchapter V or VI of chapter 34 of such title 38, or who has a service-connected disability as defined in section 101(16) of such title 38, or who is disabled, as determined in accordance with regulations promulgated by the Secretary after consultation with the Administrator of Veterans' Affairs.

"(2) In any case where a person on behalf of whom a payment is made under this section attends an institution on less than a full-time basis, the amount of the payment on behalf of that person shall be reduced in proportion to the degree to which that person is not attending on a full-time basis. In no case shall a payment be made on behalf of a person who attends an institution on less than a half-time basis.

"(c)(1) An institution of higher education shall be eligible to receive the payment to which it is entitled under this section only if it makes application therefor to the Secretary. An application under this section shall be submitted at such time or times, in such manner, in such form and containing such information as the Secretary determines necessary to carry out the functions of the Secretary under this title, and shall—

"(A) set forth such policies, assurances, and procedures as will insure that—

"(i) the funds received by the institution under this section and available to it after the requirements of subsection (e) have been met will be used solely to defray instructional expenses in academically related programs of the applicant;

"(ii) the funds received by the institution under this section will not be used for a school or department of divinity or for any religious worship or sectarian activity;

"(iii) the applicant will expend, during the academic year for which a payment is sought, for all academically related programs of the institution, an amount equal to at least the average amount so expended during the three years preceding the year for which the grant is sought; and

"(iv) the applicant will submit to the Secretary such reports as the Secretary may require by regulation;

"(B) contain such other statement of policies, assurances, and procedures as the Secretary may require by regulation in order to protect the financial interests of the United States; and

"(C) set forth such plans, policies, assurances, and procedures as will insure that the applicant will make an adequate effort—

"(i) to maintain a full-time office of veterans' affairs which has responsibility for veterans' outreach, recruitment, and special education programs, including the provision of educational, vocational, and personal counseling for veterans,

"(ii) to carry out programs designed to prepare educationally disadvantaged veterans for postsecondary education (I) under subchapter V of chapter 34 of title 38, United States Code, and (II) in the case of any institution located near a military installation, under subchapter VI of such chapter 34,

"(iii) to carry out active outreach (with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans), recruiting, and counseling activities through the use of funds available under federally assisted work-study programs (with special emphasis on the veteran-student services program under section 1685 of such title 38),

"(iv) to carry out an active tutorial assistance program (including dissemination of information regarding such program) in order to make maximum use of the benefits available under section 1692 of such title 38, and

"(v) to coordinate activities carried out under this part with the readjustment counseling program authorized under section 620 of title 38, United States Code, and with the veterans employment and training initiatives authorized under the Comprehensive Employment and Training Act and under chapters 41 and 42 of title 38, United States Code, in order to assist in serving the readjustment, rehabilitation, personal counseling, and employment needs of veterans,

except that an institution which the Secretary determines, in accordance with regulations jointly prescribed by the Secretary and the Administrator of Veterans' Affairs (hereinafter referred to as the 'Administrator'), cannot feasibly itself, in terms of the number of veterans in attendance there, carry out any or all of the programs set forth in subclauses (i) through (v) of clause (C), may carry out such program or programs through a consortium agreement with *one or more other institutions of higher education and shall be required to carry out such programs only to the extent that the Secretary determines, in accordance with regulations jointly prescribed by the Secretary and the Administrator, is appropriate in terms of the number of veterans in attendance at such institution. The adequacy of efforts to meet the requirements of clause (C) of this paragraph shall be determined by the Secretary, based upon the recommendations of the Administrator, in accordance with criteria established in regulations jointly prescribed by the Secretary and the Administrator.*

"(2) The Secretary shall not approve an application under this subsection unless he determines that the applicant will implement the requirements of clause (C) of paragraph (1) within the first academic year during which it receives a payment under this section.

"(d)(1) The Secretary shall pay to each institution of higher education which has had an application approved under subsection (c) the amount to which it is entitled under this section.

"(2) The maximum amount of payments to any institution of higher education, or any branch thereof which is located in a community which is different from that in which the parent institution thereof is located, in any fiscal year shall be $75,000. In making payments under this section for any fiscal year, the Secretary shall apportion the appropriation for making such payments, from funds which become available as a result of the limitation on payments set forth in the preceding sentence, in such a manner as will result in the receipt by each institution which is eligible for payment under this section of the first $9,000 (or the amount of its entitlement for that fiscal year, whichever is the lesser) and then additional amounts up to the limitation set forth in the preceding sentence.

"(e) Not less than 90 per centum of the amounts paid to any institution under subsection (d) in any fiscal year shall be used to implement the requirement of clause (C)(i) of paragraph (1) of subsection (c), and to the extent that such funds remain after implementing such requirement, funds limited by such 90 per centum requirement shall be used for implementing the requirements of subclauses (ii) through (v) of clause (C) of such paragraph (1), except that the Secretary may, in accordance with criteria established in regulations jointly prescribed by the Secretary with the Administrator, waive the requirement of this subsection to the extent that he finds that such institution is adequately carrying out all such requirements without the necessity for such application of such amount of the payments received under this subsection.

"(f) The Secretary, in carrying out the provisions of this section, shall seek to assure the coordination of programs assisted under this section with programs carried out by the Veterans' Administration pursuant to title 38, United States Code, and the Administrator shall provide all assistance, technical consultation, and information otherwise authorized by law as necessary to promote the maximum effectiveness of the activities and programs assisted under this section.

"(g) The program provided for in this section shall be administered by an identifiable administrative unit in the Department of Education.".

PART B—GUARANTEED AND INSURED STUDENT LOANS

EXTENSION OF PROGRAMS

SEC. 411. (a) Section 424(a) of the Act is amended—

(1) by striking out "1981" and inserting in lieu thereof "1986"; and

(2) by striking out "1985" and inserting in lieu thereof "1990".

(b) Section 428(a)(5) of the Act is amended—

(1) by striking out "1981" and inserting in lieu thereof "1986"; and

(2) by striking out "1985" and inserting in lieu thereof "1990".

LOAN LIMITATIONS

SEC. 412. (a) Section 425(a)(1) of the Act is amended—

(1) by redesignating clauses (A), (B), and (C), as clauses (B), (C), and (D), respectively;

(2) by inserting immediately before clause (B) (as so redesignated) the following new clause:

"(A) that in the case of an independent student (defined in accordance with section 482(c)(2)) who has not successfully completed a program of undergraduate education, the total of such loans may not exceed $3,000,"; and

(3) by striking out "clause (B)" in the last sentence of such section and inserting in lieu thereof "clause (C)".

(b) Section 425(a)(2) of the Act is amended by striking out "$7,500, in the case of any student who has not successfully completed a program of undergraduate education, and $15,000 in the case of any graduate or professional student" and inserting in lieu thereof "$12,500 in the case of any student (other than an independent student) who has not successfully completed a program of undergraduate education, $15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case of any graduate or professional student".

(c) The matter preceding division (i) of section 428(b)(1)(A) of the Act is amended—

(1) by inserting after "student" the following: "(other than an independent student)"; and

(2) by inserting after "undergraduate education," the following: "or not more than $3,000 in the case of an independent student (defined in accordance with section 482(c)(2)) who has not successfully completed a program of undergraduate education,".

(d) Section 428(b)(1)(B) of the Act is amended by striking out "$7,500, in the case of any student who has not successfully completed a program of undergraduate education, and $15,000 in the case of any gruduate or professional student" and inserting in lieu thereof "$12,500 in the case of any student (other than an independent student) who has not successfully completed a program of undergraduate education, $15,000 in the case of any independent student who has not successfully completed a program of undergraduate

education, and $25,000 in the case of any graduate or professional student".

(e) Section 428A of the Act is amended—

(1) by striking out "$2,500 (in the case of a student who has not successfully completed a program of undergraduate education) or $5,000 (in the case of a graduate or professional student)" in subsection (a)(1)(A) and in subsection (a)(2)(A) and inserting in lieu thereof in each such place the following: "$2,500 (in the case of a student, other than an independent student, who has not successfully completed a program of undergraduate education), $3,000 (in the case of an independent student (as defined in section 482(c)(2)) who has not successfully completed a program of undergraduate education), or $5,000 (in the case of a graduate or professional student)"; and

(2) by striking out "$7,500 in the case of any student who has not successfully completed a program of undergraduate education, and $15,000 in the case of any graduate or professional student" in subsection (a)(1)(A) and in subsection (a)(2)(A) and inserting in lieu thereof in each such place the following: "$12,500 in the case of any student (other than an independent student) who has not successfully completed a program of undergraduate education, $15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case of any graduate or professional student".

(f) Part B of title IV of the Act is further amended by inserting immediately before the period at the end of section 425(a)(2) and immediately before the semicolon at the end of sections 428(b)(1)(B), 428A(a)(1)(A), and 428A(a)(2)(A) the following: ", except that the Secretary may increase the limit applicable to graduate or professional students who are pursuing programs which the Secretary determines are exceptionally expensive".

DEFERRAL OF REPAYMENT

Sec. 413. (a) Section 427(a)(2)(C) is amended—

(1) by inserting "or is an officer in the Commissioned Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii); and

(2) by striking out "or (v)" and inserting in lieu thereof the following: "(v) not in excess of three years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954; (vi) not in excess of two years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; (vii) not in excess of three years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled; or (viii)".

(b) Section 428(b)(1)(M) of the Act is amended—

(1) by inserting "or is an officer in the Commissioned Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii); and

(2) by striking out "or (v)" and inserting in lieu thereof the following: "(v) not in excess of three years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954; (vi) not in excess of two years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; (vii) not in excess of three years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled, or (viii)".

(c) Section 427(a)(2)(C) of the Act is amended—

(1) by striking out "and any such period" and inserting in lieu thereof "that any such period", and

(2) by inserting before the comma at the end thereof a comma and the following: "and that no repayment of principal of any loan for any period of study, training, service, or unemployment described in this clause or any combination thereof shall begin until six months after the completion of such period or combination thereof".

(d) Section 428(b)(1)(M) is amended by inserting before the semicolon at the end thereof a comma and the following: "and that no repayment of principal of any loan for any period of study, training, service, or unemployment described in this clause or any combination thereof shall begin until six months after the completion of such period or combination thereof".

(e) Section 435 of the Act is amended by adding at the end thereof the following new subsection:

"(j) The term 'temporarily totally disabled' when used with respect to a borrower means a borrower who, by reason of injury or illness, cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed three years. Such term when used with respect to the spouse of a borrower means a spouse who, by reason of injury or illness, cannot be expected to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed three years and who during such period required continuous nursing or other similar services.".

STATE AGENCIES AS LENDERS OF LAST RESORT

SEC. 414. Section 428 of the Act is amended by adding at the end thereof the following new subsection:

"(h)(1) From sums advanced by the Association pursuant to section 439(p), each State agency and nonprofit private institution or organization with which the Secretary has an agreement under subsection (b) of this section or an eligible lender in a State described in section 435(g)(1) (D) or (F) of the Act is authorized to make loans

directly to students otherwise unable to obtain loans under this part.

"(2)(A) Each State agency or nonprofit private institution or organization which has an agreement under subsection (b) of this section or an eligible lender in a State described in section 435(g)(1) (D) or (F) and which has an application approved under section 439(p)(2) may receive advances under section 439(p) for each fiscal year in an amount necessary to meet the demand for loans under this section. The amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the average of the loans guaranteed by that agency, institution, organization, or lender for the three years preceding the fiscal year for which the determination is made. Whenever the determination required by the preceding sentence cannot be made because the agency, institution, organization, or lender does not have three years previous experience, the amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the loans guaranteed under a program of a State of comparable size.

"(B) Each State agency or nonprofit private institution or organization which has an agreement under subsection (b) of this section and each eligible lender in a State described in section 435(g)(1) (D) or (F) shall repay advances made under section 439(p) in accordance with agreements entered between the Association and such agency, institution, organization, or lender.

"(3) Loans made pursuant to this subsection shall have the same terms, conditions, and benefits as all other loans made under this part.".

INTEREST RATE AND PAYMENT

SEC. 415. (a) Section 427(b) of this Act is amended by inserting immediately before the period at the end thereof a comma and the following: "or 8 per centum per annum on such balance in the case of any borrower who on October 1, 1980, has no obligation to repay any amount of principal or interest on any loan made, insured, or guaranteed under this part".

(b)(1)(A) Section 427(a)(2)(B) of the Act is amended by striking out "nine-to-twelve-month period" the first time it appears and by inserting in lieu thereof "six months".

(B) Such section 427(a)(2)(B) is further amended by striking out "nine months nor later than one year" and by inserting in lieu thereof "six months".

(2)(A) Section 428(b)(1)(E) of the Act is amended by striking out "nine-to-twelve-month period" the first time it appears and by inserting in lieu thereof "six months".

(B) Such section 428(b)(1)(E) is further amended by striking out "nine months nor later than one year" in both places that it appears and by inserting in lieu thereof "six months".

(c) Section 428(a)(3)(B)(ii) of this Act is amended by inserting after "balance" a comma and the following: "or 8 per centum per annum on such balance in the case of any borrower who on October 1, 1980, has no obligation to repay any amount of principal or interest on any loan made, insured, or guaranteed under this part".

(d) Section 428(b)(1)(F) of this Act is amended by inserting immediately before the semicolon at the end thereof a comma and the fol-

lowing: "or 8 per centum per annum on such balance in the case of any borrower who on October 1, 1980, has no obligation to repay any amount of principal or interest on any loan made, insured, or guaranteed under this part".

(e) Section 428(d) of the Act is amended by striking out "7 per centum per annum" and inserting in lieu thereof "the rate specified in this part".

COLLECTION PRACTICES

SEC. 416. (a)(1) Section 430(b) of the Act is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following new paragraph:

"(2)(A) For the purpose of promoting responsible repayment of loans covered by Federal loan insurance pursuant to this part, the Secretary shall enter into cooperative agreements with credit bureau organizations providing for the exchange of information concerning student borrowers in accordance with the requirements of this paragraph. For the purpose of assisting such organizations to comply with the Fair Credit Reporting Act, such agreements may provide for timely response by the Secretary to requests from such organizations for responses to objections raised by such borrowers. Subject to the requirements of subparagraph (C), such agreements shall provide for the disclosure by the Secretary to such organizations with respect to any loan for which the Secretary has received a notice of default under subsection (a) of this section of—

> *"(i) the date of disbursement and the amount of any such loan;*
>
> *"(ii) information concerning collection of any such loan, including information concerning the status of any defaulted loan on which the Secretary has made a payment pursuant to subsection (a) of this section; and*
>
> *"(iii) the date of cancellation of the note upon completion of repayment by the borrower of any such loan or payment by the Secretary pursuant to section 437.*

"(B) Such agreements may also provide for the disclosure by such organizations to the Secretary, upon receipt from the Secretary of a notice under subparagraph (A)(ii) that such a loan is in default, of information concerning the borrower's location or other information which may assist the Secretary in proceeding to collection of the defaulted amount.

"(C) Agreements entered into pursuant to this paragraph shall contain such provisions as may be necessary to ensure that—

> *"(i) no information is disclosed by the Secretary unless its accuracy and completeness have been verified, and no information stating that a loan is in default is disclosed until the Secretary has made a reasonable effort to collect the debt;*
>
> *"(ii) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the Secretary with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i);*
>
> *"(iii) no use will be made of any such information which would result in the use of collection practices with respect to*

such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

"(iv) except for disclosures made to obtain the borrower's location, the Secretary (I) shall not disclose any such information until he has notified the borrower that such information will be disclosed to credit bureau organizations unless the borrower enters into repayment of his loan, but (II) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than thirty days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(D)(i) The Secretary shall, within ninety days after the date of enactment of this paragraph, take such steps as may be necessary to establish the disclosure of information described in subparagraph (A) (i), (ii), and (iii) as a routine use in accordance with section 552a(b)(3) of title 5, United States Code, and to establish a system for the prompt notification of any borrower of any disclosure made pursuant to this paragraph.

"(ii) Information disclosed by the Secretary to credit bureau organizations under the requirements of this paragraph shall not constitute a system of records within the meaning of section 552a of title 5, United States Code (the Privacy Act of 1974); and credit bureau organizations which enter into agreements with the Secretary under this paragraph shall not be considered Government contractors within the meaning of that Act.".

(2) Section 427(a)(2) of the Act is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

> *"(H)(i) contains a notice of the system of disclosure of information concerning such loan to credit bureau organizations under section 430(b)(2), and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations,".*

(b) Section 430(c) of the Act is amended by adding at the end thereof the following new sentence: "Any forbearance which is approved by the Secretary under this subsection with respect to the repayment of a loan shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and due diligence in the collection of the loan.".

(c) Section 432 of the Act is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, the Secretary may provide to eligible lenders, and to any State or any nonprofit private institution or organization having a guaranty agreement under section 428(c)(1), any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived.".

ADMINISTRATIVE IMPROVEMENTS

SEC. 417. (a) Section 428(b)(1)(H) of the Act is amended by inserting before the semicolon a comma and the following: "and insures that the proceeds of the premium will not be used for incentive payments to lenders".

(b)(1) Section 428(c)(6)(A)(ii) of the Act is amended—

(A) by striking out "and" the first time it appears and inserting in lieu thereof a comma; and

(B) by inserting after "prevention" a comma and the following: "and the administrative costs of monitoring the enrollment and repayment status of students".

(2) Section 428(c)(6)(B) is amended—

(A) by striking out "and" at the end of clause (i) and inserting in lieu thereof a comma;

(B) by inserting "and" at the end of clause (ii); and

(C) by adding after clause (ii) the following:

"(iii) 'administrative costs of monitoring the enrollment and repayment status of students' means any administrative costs by a guaranty agency which are directly related to ascertaining the student's enrollment status, prompt notification to the lender of such status, an audit of the note agreement to determine if the provisions of that agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note to assure that the repayment provisions are consistent with the provisions of this part,".

(3) Section 428(f)(1)(A) of the Act is amended—

(A) by striking out "or" at the end of clause (iii);

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following new clause:

"(iv) the administrative costs of monitoring the enrollment and repayment status of students; or".

(4)(A) Section 428(f)(1) of the Act is amended by striking out "(f)(1)(A)" and inserting in lieu thereof "(f)(1)" and by striking out subparagraphs (B) and (C).

(B) Such section is further amended by redesignating clauses (i) through (v) as clauses (A) through (E), respectively.

(5) Section 428(f)(2) of the Act is amended—

(A) by striking out "or" at the end of clause (iii);

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following new clause:

"(iv) the administrative costs of monitoring the enrollment and repayment status of students; or".

(6) Section 428(f)(3) of the Act is amended—

(A) by striking out "and" at the end of clause (B);

(B) by striking out the period at the end of clause (C) and inserting in lieu thereof a comma and the word "and"; and

(C) by adding after clause (C) the following new clause:

"(D) 'administrative costs of monitoring the enrollment and repayment status of students' means any administrative costs by a guaranty agency which are directly related to ascertaining the student's enrollment status, prompt notification to the lender of such status, an audit of the note agreement to determine if the provisions of that agreement are consistent with the records of *the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note to assure that the repayment provisions are consistent with the provisions of this part,".*

(c) Section 428(f)(3)(A) of the Act is amended by redesignating clauses (iv) and (v) as clauses (vi) and (vii) respectively, and by inserting after clause (iii) the following new clauses: "(iv) the costs of providing interest and special allowance computation and billing services to lenders, (v) the amount of non-Federal funds expended by an insurer as incentive payments to lenders to induce them to improve or expand their program participation,".

(d) Section 428 of the Act is amended by adding at the end thereof the following new subsection:

"(i)(1) Any State agency or any nonprofit private institution or organization which has an agreement under subsection (b) of this section may enter into an agreement with any eligible lender (other than an eligible institution or an agency or instrumentality of the State) for the purpose of authorizing multiple disbursements of the proceeds of a loan under which the lender will pay the proceeds of such loans into an escrow account to be administered by the State agency or any nonprofit private institution or organization in accordance with the provisions of paragraph (2) of this subsection.

"(2) Each State agency or each nonprofit private institution or organization entering into an agreement under paragraph (1) of this subsection is authorized to—

"(A) make the disbursements in accordance with the note evidencing the loan;

"(B) commingle the proceeds of all loans paid to it pursuant to the escrow agreement entered into under such paragraph (1);

"(C) invest the proceeds of such loans in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

"(D) retain interest or other earnings on such investment; and

"(E) return to the eligible lender undisbursed funds when the student ceases to carry at an eligible institution at least one-half of the normal full-time academic workload as determined by the institution.".

LOAN INFORMATION PROGRAM AUTHORIZED

SEC. 418. Title IV of the Act is amended by adding after section 433 the following new section:

"STUDENT LOAN INFORMATION BY ELIGIBLE LENDERS

"SEC. 433A. Each eligible lender shall enter into an agreement with the Secretary under which the eligible lender will, at the time such lender makes a loan to a student borrower which is insured or guaranteed under this part, provide thorough and accurate loan information on loans insured or guaranteed under this part to the student borrower. The loan information required by this section shall include—

"(1) the yearly and cumulative maximum amounts that may be borrowed by a student;

"(2) the terms on which repayment will begin;

"(3) the maximum number of years in which the loan must be repaid;

"(4) the interest rate that will be repaid, and the minimum amount of required monthly payment;

"(5) any special options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

"(6) a definition of default and the consequences to the borrower if the borrower should default, including a description of any arrangements made with credit bureau organizations; and

"(7) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.".

LOANS TO PARENTS

SEC. 419. Part B of title IV of the Act is amended by inserting immediately after section 428A the following new section:

"LOANS TO PARENTS OF DEPENDENT UNDERGRADUATE STUDENTS

"SEC. 428B. (a) Parents of a dependent undergraduate student (as defined by regulations by the Secretary) shall be eligible to borrow funds under this part in amounts specified in subsection (b), and unless otherwise specified in subsections (c) and (d), such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section the terms 'student' and 'student borrower' used in this part shall include a parent borrower under this section.

"(b)(1) Subject to paragraphs (2) and (3), the maximum amount parents may borrow for one student in any academic year or its equivalent (as defined by regulation by the Secretary) is $3,000.

"(2) The aggregate insured principal amount for insured loans made to parents on account of an undergraduate dependent student shall not exceed $15,000.

"(3) No loan may be made to any parent or student under this part which would cause their combined loans for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance as certified by the eligible institution under section 428(a)(2)(A) of this part. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

"(c)(1) Repayment of principal on loans made under this section may be deferred until the earliest of—

"(A) four years from the disbursement date of the first loan made for the educational expenses of the dependent student named in the parent's loan application;

"(B) the student's anticipated date of graduation or completion of studies estimated at the time of the application for a loan;

"(C) the date on which the student ceases to be at least a half-time student at an eligible institution; or

"(D) such other date as the parent may request.

Such repayment obligation shall not be further delayed because of any current status of the student, but nothing in this section shall be construed to prohibit a lender from exercising forbearance for the benefit of the borrower.

"(2) No payments to reduce interest costs shall be paid pursuant to section 428(a) of this part on loans made pursuant to this section.

"(3) If a borrower under this section elects to begin making regular monthly payments of principal and interest at a date later than sixty days after the date such loan is disbursed by a lender, then the interest shall be 11 per centum per year on the unpaid principal balance of the loan except that, if provided in the note or other written agreement, any interest payable by the borrower may be deferred until not later than the date upon which repayment of the first installment of principal falls due, in which case interest that has so accrued during that period may be added on that date to the principal.

"(4) If a borrower under this section elects to begin making regular monthly payments of principal and interest at a date not later than sixty days after the date such loan is disbursed by a lender, then the interest shall be 8 per centum per annum on the unpaid principal balance of the loan.

"(d) Loans made under this section shall be insured by the Secretary in a State only if—

"(1) the State is not served by a State agency or nonprofit private institution or organization having an agreement with the Secretary pursuant to section 428(b), or

"(2) an agency, institution, or organization in a State having such an agreement does not authorize loans under this section (A) within one hundred and twenty days after the effective date of this amendment, or (B) if a State is prohibited from authorizing loans under this section because of existing State law, one hundred and twenty days after the adjournment of the next regular session of the State legislature which convenes after the effective date of this amendment.".

SPECIAL ALLOWANCES

SEC. 420. (a) Section 438 of the Act is amended to read as follows:

"SPECIAL ALLOWANCES

"SEC. 438. (a) In order to assure (1) that the limitation on interest payments or other conditions (or both) on loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to establish an improved method for the determination of the quarterly rate of the special allowances on such loans, and to provide for a thorough, expeditious and objective examination of alternative methods for the determination of the quarterly rate of such allowances.

"(b)(1) A special allowance shall be paid for each of the three-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any three-month period shall be a percentage of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by such holder during such period.

"(2)(A) Subject to subparagraph (D) and paragraph (4), the special allowance paid pursuant to this subsection on loans bearing interest at the rate of 7 per centum per annum shall be computed (i) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (ii) by subtracting 3.5 per centum from such average, (iii) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (iv) by dividing the resultant per centum by four.

"(B) Subject to subparagraph (D) and paragraph (4), the special allowance paid pursuant to this subsection on loans bearing interest at the rate of 8 per centum per annum shall be computed (i) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (ii) by subtracting 4.5 per centum from such average, (iii) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (iv) by dividing the resultant per centum by four.

"(C) Subject to subparagraph (D) and paragraph (4), the special allowance paid pursuant to this subsection on loans bearing interest at the rate of 11 per centum per annum shall be computed (i) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (ii) by subtracting 7.5 per centum from such average, (iii) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (iv) by dividing the resultant per centum by four.

"(D)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954 shall be one-half the quarterly rate of the special allowance established under subparagraph (A), (B), or (C). Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds. This subparagraph shall not apply to loans which were made or insured prior to October 1, 1980.

"(ii) The rate set under division (i) shall not be less than (I) 2.5 per centum per annum in the case of loans bearing interest at the rate of 7 per centum per annum, or (II) 1.5 per centum per annum in the case of loans bearing interest at the rate of 8 per centum per annum.

"(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with section 420(b) of the Education Amendments of 1980.

"(3) The holder of an eligible loan shall be deemed to have a contractual right against the United States, during the life of such loan, to receive the special allowance according to the provisions in

effect under this section at the time such loan was made or insured. Subject to paragraph (4) the special allowance determined for any such three-month period shall be payable at such time, after the close of such period, as may be specified by or pursuant to regulations promulgated under this section.

"(4)(A) If payments of the special allowances payable under this section or of interest payments under section 428(a) with respect to a loan have not been made within thirty days after the Secretary has received an accurate, timely, and complete request for payment thereof, the special allowance payable to such holder shall be increased by an amount equal to the daily interest accruing on the special allowance and interest benefits payments due the holder.

"(B) Such daily interest shall be computed at the daily equivalent rate of the sum of the special allowance rate computed pursuant to paragraph (2) and the interest rate applicable to the loan and shall be paid for the later of (i) the thirty-first day after the receipt of such request for payment from the holder, or (ii) the thirty-first day after the final day of the period or periods covered by such request, and shall be paid for each succeeding day until, and including, the date on which the Secretary authorizes payment.

"(C) For purposes of reporting to the Congress the amounts of special allowances paid under this section, amounts of special allowances paid pursuant to this paragraph shall be segregated and reported separately.

"(5) As used in this section, the term 'eligible loan' means a loan which is insured under this part, or made under a program covered by an agreement under section 428(b) of this Act.

"(6) The Secretary shall pay the holder of an eligible loan, at such time or times as are specified in regulations, a special allowance prescribed pursuant to this subsection subject to the condition that such holder shall submit to the Secretary, at such time or times and in such a manner as he may deem proper, such information as may be required by regulation for the purpose of enabling the Secretary to carry out his functions under this section and to carry out the purposes of this section.

"(c) The Secretary shall adopt or amend appropriate regulations pertaining to programs carried on under this part to prevent, where practicable, any practices which he finds have denied loans to a substantial number of eligible students.".

(b) In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, to be eligible to receive a special allowance under section 438 (b)(2)(C) of the Higher Education Act of 1965, the Authority shall submit to the Secretary a plan for doing business. The Secretary shall approve or disapprove such plan within 30 days after the date of its submission. Each such plan shall contain provisions designed to assure that—

(1) no eligible lender in the area served by the Authority will be excluded from participation in the program of the Authority and that all eligible lenders may participate in the program on the same terms and conditions if eligible lenders are going to participate in the program;

(2) no director or staff member of the Authority who receives compensation from the Authority may own stock in, or receive

compensation from any agency that would contract to service and collect the loans of the Authority;

(3) student loans will not be purchased from participating lenders at a premium or discount amounting to more than 1 per centum of the unpaid principal amount borrowed plus accrued interest to the date of acquisition, but a reasonable loan transfer fee may be paid by the purchaser;

(4) the Authority will, within the limit of funds available and subject to applicable State and Federal law, make loans to, or purchase loans incurred by, all eligible students who are residents of, or who attend an eligible institution within, the area served by the Authority;

(5) the Authority has a plan under which the Authority will pursue the development of new lender participation in a continuing program of benefits to students together with assurances of existing lender commitments to the program; and

(6) there will be an annual audit of the Authority by a certified public accounting firm which will include review of compliance by the Authority with the provisions of the plan.

THE STUDENT LOAN MARKETING ASSOCIATION

SEC. 421. (a)(1) Section 439(a)(1) of the Act is amended by striking out "Government-sponsored".

(2) Section 439(f) of the Act is amended to read as follows:

"(f)(1) The Association shall have common stock having such par value as may be fixed by its Board of Directors from time to time which may be issued only to lenders under this part, pertaining to guaranteed student loans, who are qualified as insured lenders under this part or who are eligible institutions, as defined in section 435(a), other than an institution outside of the United States.

"(2) Each share of common stock shall be entitled to one vote with rights of cumulative voting at all elections of Directors. Voting shall be by classes as described in subsection (c)(3).

"(3) The maximum number of shares of common stock that the Association may issue and have outstanding at any one time shall be fixed by the Board of Directors from time to time. Any common share issued shall be fully transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

"(4) To the extent that net income is earned and realized, subject to subsection (g)(2), dividends may be declared on common stock and nonvoting common stock by the Board of Directors. Such dividends as may be declared by the Board shall be paid to the holders of outstanding shares of common stock and nonvoting common stock, except that no such dividends shall be payable with respect to any share which has been called for redemption past the effective date of such call.

"(5) The Association is authorized to issue nonvoting common stock having such par value as may be fixed by its Board of Directors from time to time. Any nonvoting common stock shall be freely transferable, except that, as to the Association, it shall be transferable only on the books of the Association.".

(3) The first sentence of section 439(g)(1) of the Act is amended to read as follows: "The Association is authorized to issue nonvoting

preferred stock having such par value as may be fixed by its Board of Directors from time to time.".

(b)(1) Section 439(d) of the Act is amended—

(A) in paragraph (1), by inserting "or repurchase," after "purchase" and by inserting "or resell, offer participations, or pooled interests," after "sell";

(B) by amending paragraph (2) to read as follows:

"(2) Any warehousing advance made under paragraph (1) of this subsection shall be made on the security of (A) insured loans, (B) marketable obligations and securities issued, guaranteed or insured by, the United States, or for which the full faith and credit of the United States is pledged for the repayment of principal and interest thereof, or (C) marketable obligations issued, guaranteed, or insured by any agency, instrumentality or corporation of the United States for which the credit of such agency, instrumentality or corporation is pledged for the repayment of principal and interest thereof, in an amount equal to the amount of such advance. The proceeds of any such advance secured by insured loans shall either be invested in additional insured loans or the lender shall provide assurances to the Association that during the period of the borrowing it will maintain a level of insured loans in its portfolio not less than the aggregate outstanding balance of such loans held at the time of the borrowing. The proceeds from any such advance secured by collateral described in clauses (B) and (C) shall be invested in additional insured student loans."; and

(C) by adding at the end thereof the following new paragraph:

"(4) Securities issued pursuant to the offering of participations or pooled interests under paragraph (1) of this subsection may be in the form of debt obligations, or trust certificates of beneficial ownership, or both. Student loans set aside pursuant to the offering of participations or pooled interests shall at all times be adequate to ensure the timely principal and interest payments on such securities.".

(2) Section 439(l) of the Act is amended by inserting "including those made under subsection (d)(4)" immediately after "All obligations issued by the Association".

(c) Section 439(e)(A) of the Act is amended by striking out "$50,000,000" and inserting in lieu thereof "$75,000,000".

(d)(1) Section 439(h)(1) of the Act is amended to read as follows:

"(h)(1) The Association is authorized with the approval of the Secretary of Education and the Secretary of the Treasury to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association. The authority of the Secretary of Education to approve the issuance of such obligations is limited to obligations issued by the Association and guaranteed by the Secretary pursuant to paragraph (2) of this subsection. Such obligations may be redeemable at the option of the Association before maturity in such manner as may be stipulated therein. The Secretary of the Treasury may not direct as a condition of his approval that any such issuance of obligations by the Association be made or sold to the Federal Financing Bank.".

(2) Section 439(h)(2) of the Act is amended—

(A) by striking out "July 1, 1982" and inserting in lieu thereof "October 1, 1984"; and

(B) by adding at the end thereof the following new sentence: "Nothing in this section shall be construed so as to authorize

the Secretary of Education or the Secretary of the Treasury to limit, control, or constrain programs of the Association or support of the Guaranteed Student Loan Program by the Association.".

(3) Section 439(h) of the Act is amended by adding at the end thereof the following new paragraphs:

"(4) Upon receipt of a request from the Association under this subsection requiring approvals by the Secretary of Education or the Secretary of the Treasury, the Secretary of Education or the Secretary of the Treasury shall act promptly either to grant approval or to advise the Association of the reasons for withholding approval. In no case shall such an approval be withheld for a period longer than sixty days unless, prior to the end of such period, the Secretary of Education and the Secretary of the Treasury submit to the Congress a detailed explanation of reasons for doing so.

"(5) The Secretary of the Treasury is authorized to purchase any obligations issued by the Association pursuant to this subsection as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $1,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

"(6) Notwithstanding any other provision of law the Association is authorized to sell or issue obligations on the security of student loans, the payment of interest or principal of which has at any time been guaranteed under section 428 or 429 of this part, to the Federal Financing Bank.".

(e)(1) Section 439 of the Act is amended by adding at the end thereof the following new subsections:

"(o)(1)(A) The Association or its designated agent may, upon request of a borrower who has received loans under this title from two or more programs or lenders, or has received any other federally insured or guaranteed student loan, and where the borrower's aggregate outstanding indebtedness is in excess of $5,000, or where the borrower's aggregate outstanding indebtedness is in excess of $7,500 from a single lender under this part, make, notwithstanding any other provision of this part limiting the maximum insured principal amount for all insured loans made to a borrower, a new loan to the

borrower in an amount equal to the unpaid principal and accrued unpaid interest on the old loans. The proceeds of the new loan shall be used to discharge the liability on such old loans.

"(B) The Association in making loans pursuant to this subsection in any State served by a State agency or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b) or an eligible lender in a State described in section 435(g)(1)(D) or (F) may designate as its agent such agency, institution, organization, or lender to perform such functions as the Association determines appropriate. Any agreements made pursuant to this subparagraph shall be on such terms and conditions as agreed upon by the Association and such agency, institution, organization, or lender.

"(2) Loans made pursuant to this subsection shall be insurable either by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1) or by a State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b), except that such State or nonprofit private institution or organization shall provide the Association with a certificate of comprehensive insurance coverage. The terms of loans made under this subsection shall be such as may be agreed upon by the borrower and the Association and meet the requirements of section 427, except that (A) the ten-year maximum period referred to in section 427(a)(2)(B) may be extended to no more than twenty years, and (B) clause (ii) of section 427(a)(2)(B) shall not be applicable.

"(3) Notwithstanding any other provision of this part, the Association, with the agreement of the borrower, may establish such repayment terms as it determines will promote the objectives of this subsection including, but not limited to, the establishment of graduated, income sensitive repayment schedules.

"(4) The Association shall develop a program to ensure the dissemination of information to students, lenders, and institutions of higher education regarding the loans authorized by this subsection.

"(p)(1) The Association shall make advances in each fiscal year from amounts available to it to each State agency, nonprofit institution or organization, and eligible lender described in subsection 428(h)(1) which has an agreement with the Association which sets forth that advances are necessary to enable such agency, institution, organization or lender to make student loans in accordance with section 428(h) of this title and that such advances will be repaid to the Association in accordance with such terms and conditions as may be set forth in the agreement and agreed to by the Association and such agency, institution, organization, or lender. Advances made under this subsection shall not be subject to section 439(d)(2) of this Act.

"(2) No advance may be made under this subsection unless the State agency or nonprofit private institution, organization, or lender makes an application to the Association, which shall be accompanied by such information as the Association determines to be reasonably necessary.

"(q)(1)(A) Whenever the Secretary determines that eligible borrowers in a State not served by a State agency or nonprofit private institution or organization having an agreement pursuant to section 428(b), or an eligible lender in a State described in section 435(g)(1)

(D) or (F) are seeking and are unable to obtain loans under this part, the Association or its designated agent may begin making loans in accordance with this subsection at the request of the Secretary. The Association shall give preference to such States in making loans under this subsection.

"(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1).

"(2)(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the agency in a State or nonprofit private institution or organization having an agreement pursuant to section 428(b), or an eligible lender in a State described in section 435(g)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent may begin making loans in accordance with this subsection at the request of the Secretary.

"(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pursuant to section 428(b). For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

"(3) The Association or its designated agent shall cease making loans under this part in any State at such time as it is determined by the Secretary, with regard to loans made under paragraph (1), or by any party to the agreement required by paragraph (2), that—

> *"(A) the conditions which caused the implementation of this subsection have ceased to exist; or*
>
> *"(B) the implementation of this subsection has either (i) further reduced the availability of loans from other sources in the applicable geographical area, or (ii) inhibited the formation in a State of an agency which would have an agreement pursuant to section 428(b) of this part which would have the responsibility of developing local sources of funds for student loans.".*

(2) Section 435(g)(1) of the Act is amended by striking out "and" at the end of subparagraph (E), by striking out the period at the end of subparagraph (F), and by adding at the end thereof the following:

> *"(G) for purposes of making loans under section 439 (o) and (q), the Student Loan Marketing Association; and*
>
> *"(H) for purposes of making loans under section 428(j), a State agency or a nonprofit private institution or organization having an agreement under section 428(b).".*

PROMPT DUE DILIGENCE DETERMINATIONS

SEC. 422. Section 430(a) of the Act is amended by adding at the end thereof the following new sentence: "The Secretary shall make the determination required to carry out the provisions of this section not later than ninety days after the notification by the insurance beneficiary and shall make payment in full on the amount of the *beneficiary's loss pending completion of his due diligence investigation.".*

MISCELLANEOUS AMENDMENTS

SEC. 423. (a)(1) Section 427(a)(1) of the Act is amended to read as follows:

"(1) made to a student who (A) is an eligible student under section 484, and (B) has agreed to notify promptly the holder of the loan concerning any change of address; and".

(2) Section 428(a)(2)(B)(i) of the Act is amended to read as follows:

"(i) a student's estimated cost of attendance means the cost of attendance for such student determined in accordance with section 482(d);".

(b) The first sentence of section 428(c)(1)(A) of the Act is amended by striking out everything after "of any insured loan" and inserting in lieu thereof a period.

(c) Section 428(e) of the Act is amended to read as follows:

"(e) From funds appropriated to carry out this part in any fiscal year, the Secretary shall pay to each eligible institution the amount of $10 per academic year for each student enrolled in that institution who is in receipt of a loan described in paragraph (1) of subsection (a) of this section or made under section 428B, for that year. Payments received by an institution under this subsection shall be used solely for the purpose of offsetting the costs to the institution for the program under this part.".

(d) Section 428(f) of the Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) The Secretary shall make payments in accordance with this paragraph to an agency, institution, or organization in any State which has an agreement under subsection (b) of this section which provides a lender referral service for students who meet the requirements of subparagraph (B).

"(B) A student is eligible to apply for lender referral services to an agency, institution, or organization in a State if (i) such student is either a resident of such State or is accepted for enrollment in or is attending an eligible institution in such State, and (ii) such student has sought and was unable to find a lender willing to make a loan under this part.

"(C) The amount which the Secretary shall pay to any eligible agency, institution, or organization under this paragraph shall be equal to one-half of 1 per centum of the total principal amount of the loans upon which insurance was issued under this part on loans made to a student described in subparagraph (B) who subsequently obtained such loans because of such agency's, institution's, or organization's referral service.

"(D) Nothing in this or any law shall prohibit an agency from using all or a portion of the funds received under this part for the payment of incentive fees to lenders who agree to participate in a loan referral service.

"(E) There is authorized to be appropriated such sums as are necessary to carry out the provisions of this paragraph.".

PART C—WORK-STUDY PROGRAMS

PURPOSE; APPROPRIATIONS AUTHORIZED

SEC. 431. Section 441 of the Act is amended to read as follows:

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 441. (a) The purpose of this part is to stimulate and promote the part-time employment of students, particularly students who are in need of earnings from employment to pursue courses of study at eligible institutions.

"(b) There are authorized to be appropriated for carrying out this part $670,000,000 for fiscal year 1981, $720,000,000 for fiscal year 1982, $760,000,000 for fiscal year 1983, $800,000,000 for fiscal year 1984, and $830,000,000 for fiscal year 1985.".

ALLOTMENT TO STATES

SEC. 432. Section 442 of the Act is amended—

(1) by striking out "2 per centum" in subsection (a)(1) and inserting in lieu thereof "1 per centum";

(2) by striking out "Puerto Rico," in subsection (a)(1);

(3) by striking out "subsection (e)" in subsection (a)(2) and inserting in lieu thereof "subsection (f)".

(4) by inserting "second" immediately after "until the close of the" in subsection (d); and

(5) by striking out "Puerto Rico," in subsection (e).

USE OF CERTAIN UNUSED COLLEGE WORK-STUDY PROGRAM FUNDS FOR THE SUPPORT OF COOPERATIVE EDUCATION PROGRAMS

SEC. 433. (a) The first sentence of section 442(d) of the Act is amended by inserting before the period a comma and the following: "except that the Secretary shall give preference for the first 50 per centum of such reallotments to eligible institutions for use for initiating, improving, and expanding programs of cooperative education conducted in accordance with title VIII of this Act".

(b) Section 442(d) of the Act is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) The requirement for preference under reallotment contained in the exception of the first sentence of paragraph (1) of this subsection shall be made upon application by the eligible institution to the Secretary in such manner and such form as the Secretary may require. The Secretary shall allot funds under such preference based upon the ratio of the number of students assisted under the cooperative education program authorized by title VIII for the fiscal year for which the determination is made enrolled in the eligible institution making application under this paragraph to the number of such students for such year enrolled in all eligible institutions applying under this part.".

GRANTS FOR WORK-STUDY PROGRAMS

Sec. 434. Part C of title IV of the Act is amended by striking out sections 443 and 444 and inserting in lieu thereof the following:

"GRANTS FOR WORK-STUDY PROGRAMS

"Sec. 443. (a) The Secretary is authorized to enter into agreements with institutions of higher education under which the Secretary will make grants to such institutions to assist in the operation of work-study programs as provided in this part.

"(b) An agreement entered into pursuant to this section shall—

"(1) provide for the operation by the institution of a program for the part-time employment of its students in work for the institution itself (except in the case of a proprietary institution of higher education) or work in the public interest for a Federal, State, or local public agency or private nonprofit organization under an arrangement between the institution and such agency or organization, and such work—

"(A) will not result in the displacement of employed workers or impair existing contracts for services;

"(B) will be governed by such conditions of employment as will be appropriate and reasonable in light of such factors as type of work performed, geographical region, and proficiency of the employee;

"(C) does not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship; and

"(D) will not pay any wage to students employed under this subpart that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938;

"(2) provide that funds granted an institution of higher education, pursuant to section 443, may be used only to make payments to students participating in work-study programs, except that an institution may use a portion of the sums granted to it to meet administrative expenses in accordance with section 489 of this Act, may use a portion of the sums granted to it to meet the cost of a job location and development program in accordance with section 447 of this part, and may transfer funds in accordance with the provisions of section 488 of this Act;

"(3) provide that in the selection of students for employment under such work-study program, only students who demonstrate financial need in accordance with the provisions of section 482, and who meet the requirements of section 484 will be assisted, except that each eligible institution may reserve and award not more than 10 per centum of the funds made available under this part for each fiscal year for less-than-half-time students who are determined by the institution to be in need of such grants and who meet the requirements of section 484, other than the requirement of clause (2) of section 484(a);

"(4) provide that no student in a work-study program under this part shall be required to terminate that employment during a semester (or other regular enrollment period) at the time

income derived from any employment (including work-study or nonwork-study or both) is in excess of the determination of the amount of such student's need for that semester under clause (3) of this subsection, but when such excess income equals $200 or more, continued employment under a work-study program shall not be subsidized with funds appropriated under this part;

"(5) provide that the institution will meet the requirements of section 487(2) of this Act (relating to maintenance of effort);

"(6) provide that the Federal share of the compensation of students employed in the work-study program in accordance with the agreement will not exceed 80 per centum of such compensation; except that the Federal share may exceed 80 per centum of such compensation if the Secretary determines, pursuant to regulations adopted and promulgated by him establishing objective criteria for such determinations, that a Federal share in excess of 80 per centum is required in furtherance of the purposes of this part;

"(7) include provisions to make employment under such work-study program reasonably available (to the extent of available funds) to all eligible students in the institution in need thereof, and to make equivalent employment offered or arranged by the institution reasonably available (to the extent of available funds) to all students in the institution who desire such employment;

"(8) provide assurances that employment made available from funds under this part will, to the maximum extent practicable, complement and reinforce the educational program or vocational goals of each student receiving assistance under this part; and

"(9) include such other provisions as the Secretary shall deem necessary or appropriate to carry out the purposes of this part.".

DISTRIBUTION OF ASSISTANCE

SEC. 435. (a) Section 446(a) of the Act is amended by inserting at the end thereof the following new sentence: "The criteria established under this subsection shall not result in any institution's receiving an amount less than the institution used under this section for fiscal year 1979, unless there is a substantial decline in the student enrollment of the institution.".

(b) Section 446 of the Act is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) Of the sums granted to an eligible institution under this part for any fiscal year, 10 per centum may, at the discretion of the institution, remain available for expenditure during the succeeding fiscal year to carry out programs under this part. Any of the sums so granted to an institution for a fiscal year which are not needed by that institution to operate work-study programs during that fiscal year, and which it does not wish to use during the next fiscal year as authorized in the preceding sentence, shall remain available to the Secretary for making grants under section 443 to other institutions in the same State until the close of the second fiscal year next succeeding the fiscal year for which such funds were appropriated.

"(c) Up to 10 per centum of the sums the Secretary determines an eligible institution may receive from funds which have been appropriated for a fiscal year may be used by the Secretary to make grants under this part to such institution for expenditure during the fiscal year preceding the fiscal year for which the sums were appropriated.".

JOB LOCATION AND DEVELOPMENT

SEC. 436. Section 447 of the Act is amended by striking out "$15,000" and inserting in lieu thereof "$25,000".

WORK STUDY FOR COMMUNITY SERVICE-LEARNING

SEC. 437. Part C of title IV of the Act is amended by adding at the end thereof the following new section:

"WORK STUDY FOR COMMUNITY SERVICE-LEARNING ON BEHALF OF LOW-INCOME INDIVIDUALS AND FAMILIES

"SEC. 448. (a) The purpose of this section is to encourage and enable institutions of higher education to develop work study programs involving eligible students in community service-learning designed to develop, improve, or expand services for low-income individuals and families or to solve particular problems related to the needs of low-income individuals.

"(b) For the purpose of this section—

"(1) 'community service-learning' means a program of student work that—

"(A) provides tangible community services for or on behalf of low-income individuals or families; and

"(B) provides participating students with work-learning opportunities related to their educational or vocational programs or goals; and

"(2) 'community services' means direct service, planning or applied research activities designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs including, but not limited to, such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

"(c) Each institution participating under this part may use funds made available under the last sentence of section 489(a) to conduct that institution's program of community service-learning, including—

"(1) development of mechanisms to assure the academic quality of the student experience,

"(2) assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives, and

"(3) collaboration with public and private nonprofit agencies in the planning and administration of such programs.".

PART D—NATIONAL DIRECT STUDENT LOANS

EXTENSION OF PROGRAM

SEC. 441. (a) Section 461(b)(1) of the Act is amended to read as follows:

"(b)(1) For the purpose of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $400,000,000 for each of the fiscal years 1981 and 1982, $475,000,000 for fiscal year 1983, $550,000,000 for fiscal year 1984, and $625,000,000 for fiscal year 1985, except that no funds are authorized to be appropriated for any fiscal year which begins after there has been a capital distribution under section 466(a).".

(b) Section 461(b)(2) of the Act is amended—

(1) by striking out "for the fiscal year ending September 30, 1980, and each of the three succeeding fiscal years" and inserting in lieu thereof "for fiscal year 1985 and each of the five succeeding fiscal years"; and

(2) by striking out "October 1, 1980" and inserting in lieu thereof "October 1, 1985".

ALTERNATIVE FUNDING FOR DIRECT LOANS

SEC. 442. (a) Part E of title IV of the Act is amended by adding at the end thereof the following new section:

"ALTERNATIVE SOURCE OF FUNDS

"SEC. 468. (a)(1) The Secretary is authorized to issue and to have outstanding at any one time notes, debentures, bonds, or other obligations in such amounts as shall be necessary to carry out functions under this part, subject to such annual limitations as may be provided in an appropriation Act, except that the Secretary shall not issue any such obligation without the prior concurrence of the Secretary of the Treasury as to the terms and conditions of such obligations. The Secretary of the Treasury may direct that any such issuance by the Secretary be sold to the Department of the Treasury for its own account or to the Federal Financing Bank.

"(2) The Secretary of the Treasury is authorized and directed to purchase any obligations issued under this section, and for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under the Second Liberty Bond Act are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this section shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. Interest due on obligations of the Secretary held by the Treasury may be deferred, at the discretion of the Secretary, but any such deferred interest shall bear interest at the rate specified in this section. The Secretary of Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations

acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public debt transactions of the United States.

"(3) All obligations of the Secretary issued under this section shall be fully and unconditionally guaranteed as to principal and interest and shall constitute general obligations of the United States, backed by the full faith and credit of the Government of the United States of America. Such guarantee shall be expressed on the face of all such obligations.

"(4) Obligations of the Secretary issued pursuant to this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. All stock and obligations issued by the Secretary pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States.

"(5) In order that the Secretary may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this section, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Secretary, to be held in the Treasury subject to delivery, upon order of the Secretary. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Secretary shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other obligations.

"(6) All moneys of the Secretary not otherwise employed may be—

"(A) deposited with the Treasury of the United States subject to withdrawal by the Secretary, by check drawn on the Treasury of the United States by a Treasury disbursing officer, or

"(B) with the approval of the Secretary of the Treasury, deposited in any Federal Reserve bank, or

"(C) with the approval of the Secretary of the Treasury, and by authorization of the Secretary, used in the purchase for redemption and retirement of any notes, debentures, bonds, or other obligations issued by the Secretary.

"(b)(1) The Secretary shall make payments under this section for any fiscal year to each institution of higher education having an agreement under section 463 on the basis of the estimated needs of that institution for making student loans taking into consideration—

"(A) the cost of attendance at that institution,

"(B) the financial need of students at that institution to meet the cost of attendance as determined under section 482, and

"(C) the financial assistance received by students at that institution under parts A and C of this title, or any other provision of Federal law (other than part B), and other scholarship, grant, work, and loan assistance received by students,

subject to the limitations specified in section 464(a)(2). No application under subsection (c) shall be approved which requests an *amount greater than the amount determined under this subsection to be needed by that institution.*

"(2) If the total amount of Federal capital contributions requested in applications under subsection (c) exceeds the amount available under this section for a fiscal year, the request from each institution shall be ratably reduced, except that no reduction may be made under this sentence to an amount which, together with funds available to the institution of higher education under section 463(a)(2) (A) and (B) for that fiscal year, is less than the amount which was used by that institution for making loans under this part during fiscal year 1980. In case additional amounts become available for such contributions in any fiscal year in which requests have been so reduced, such requests shall be increased on the same basis as they were reduced, except that no such request shall be increased above the amount requested in the application.

"(c) Any institution of higher education desiring to receive payments of Federal capital contributions from the apportionment under subsection (b) shall submit an application therefor to the Secretary at such time as the Secretary prescribes.

"(d) There are authorized to be appropriated such sums as may be necessary to pay the differential between the rate of return on obligations of the Secretary made under this section and the interest collected on student loans made under this part.

"(e) In carrying out the provisions of this part, the Secretary is authorized—

"(1) to consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note evidencing a loan which has been made under this part;

"(2) to enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption;

"(3) to conduct litigation in accordance with the provisions of section 432(a)(2); and

"(4) to enter into a contract or other arrangement with State or nonprofit agencies and, on a competitive basis, with collection agencies for servicing and collection of loans under this part.".

(b)(1) Section 463(a)(2) of the Act is amended to read as follows:

"(2) provide for the deposit in such fund of—

"(A) Federal capital contributions from funds appropriated under section 461;

"(B) a capital contribution by such institution in an amount equal to not less than one-ninth of the amount of the Federal capital contributions described in subparagraph (A);

"(C) Federal capital contributions from funds provided by the Secretary under section 468;

"(D) collections of principal and interest on student loans made from deposited funds other than those described in subparagraph (C);

"(E) charges collected pursuant to regulations under section 464(c)(1)(H); and

"(F) any other earnings of the funds;".

(2) Section 463(a)(3)(D) of the Act is amended by striking out "section 464(c)(1)(G)" and inserting in lieu thereof "section 464(c)(1)(H)".

(3) Section 463(a) of the Act is further amended by striking out "and" at the end of paragraph (5), by redesignating paragraph (6) as paragraph (9), and by inserting immediately after paragraph (5) the following new paragraph:

> *"(6)(A) provide that collections of principal and interest on student loans made from funds described in paragraph (2)(C), after deduction of any costs of litigation and other servicing and collection costs agreed to by the Secretary in connection with the servicing and collection of such a loan (and interest thereon) or a charge assessed pursuant to regulations under section 464(c)(1)(H), shall be paid to the Secretary at such time and in such manner as the Secretary may prescribe by regulation; or*
>
> *"(B) provide that, if an institution of higher education determines not to service and collect student loans made from funds described in paragraph (2)(C), the institution will assign, at the beginning of the repayment period, notes or evidence of obligations of student loans made from funds described in such paragraph to the Secretary;".*

(4) Section 463(b) of the Act is amended by inserting "(1)" after the subsection designation and by adding at the end thereof the following new paragraph:

"(2) An institution which has entered into an agreement under subsection (a) and has elected to assign the notes or evidence of obligations of student loans in accordance with paragraph (6)(B) of such subsection shall be eligible to receive, from funds available to the Secretary, an amount equal to $10 per academic year for each student enrolled in that institution who in that year received a loan from funds described in paragraph (2)(C) of subsection (a) of this section. Payments received by an institution under this paragraph shall be used for the purpose of offsetting the costs to the institution for the program under this part.".

(5) Section 464(c)(1)(G) of the Act is amended by inserting before the semicolon a comma and the following: "and except as necessary to carry out section 463(a)(6)(B)".

(6) Section 465(b) of the Act is amended by inserting immediately before the period at the end of the first sentence the following: ", minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 468".

(c) Section 466 of the Act is amended—

> *(1) by striking out subsection (a) and inserting in lieu thereof the following:*

"(a) During the period beginning three months and ending six months after the Secretary determines (and so publishes in the Federal Register) that the total amount available for deposit in student loan funds pursuant to section 463(a)(2)(C) available for loans during such fiscal year equals or exceeds the total amount deposited in student loan funds pursuant to section 463(a)(2) (A), (B), (D), (E), and (F), available for loans during the preceding fiscal year, there shall be a capital distribution of the balance of the student loan fund established under this part by each institution of higher education as follows:

"(1) The Secretary shall first be paid an amount which bears the same ratio to the balance in such fund at the close of such fiscal year (excluding any portion of such balance which was deposited pursuant to section 463(a)(2)(C)) as the total amount of the Federal capital contributions to such fund by the Secretary from funds appropriated under section 461 or under title II of the National Defense Education Act of 1958 bears to the sum of such Federal contributions and the institution's capital contribution to such fund.

"(2) The remainder of such balance, excluding any portion of such balance which was deposited pursuant to section 463(a)(2)(C), shall be paid to the institution.

"(3) Any portion of such balance which was deposited pursuant to section 463(a)(2)(C) shall be retained in the student loan fund for use in accordance with this part.

If a capital distribution has not occurred under the preceding provisions of this subsection by September 30, 1990, such a distribution shall be made in accordance with paragraphs (1), (2), and (3) during the period beginning October 1, 1990, and ending March 31, 1991.";

(2) in subsection (b), by striking out "After March 31, 1985," and inserting in lieu thereof "After a capital distribution occurs under subsection (a),";

(3) in subsection (b), by inserting "(other than student loans made from funds deposited pursuant to section 463(a)(2)(C))" immediately after "on student loans";

(4) in subsection (c), by striking out "prior to October 1, 1984"; and

(5) by adding at the end thereof the following new subsection:

"(d) The Secretary shall use funds received pursuant to this section, notwithstanding any other provision of law, to make payments to institutions of higher education under section 468(b) for deposit in accordance with section 463(a)(2)(C), but only to the extent necessary to meet the aggregate needed by institutions of higher education under section 468(b)(1).".

LOAN LIMITATIONS

SEC. 443. Section 464(a)(2) of this Act is amended—

(1) by striking out "$10,000" in clause (A) and inserting in lieu thereof "$12,000";

(2) by striking out "$5,000" in clause (B) and inserting in lieu thereof "$6,000"; and

(3) by striking out "$2,500" in clause (C) and inserting in lieu thereof "$3,000".

DEFERRAL OF REPAYMENT

SEC. 444. (a) Section 464(c)(2)(A) of the Act is amended—

(1) by inserting "or is an officer in the Commissioned Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii);

(2) by striking out "or" at the end of clause (iii), by striking out the period at the end of clause (iv) and inserting in lieu thereof a semicolon, and by inserting after clause (iv) the following new clauses:

"(v) is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

"(vi) is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; or

"(vii) is temporarily totally disabled (as defined in section 435(j)), as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled.";

(3) by striking "clause (ii), (iii), or (iv)" in the second sentence of such section and inserting in lieu thereof "clause (ii), (iii), (iv), (v), or (vii)"; and

(4) by inserting immediately after such sentence the following new sentence: "The period during which repayment may be deferred by reason of clause (vi) shall not exceed two years.".

(b) Section 464(c)(2) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C) No repayment of principal of, or interest on, any loan for any period of study, service, or disability described in subparagraph (A) or any combination thereof shall begin until nine months after the completion of such period of study, service, disability, or combination thereof.".

(c) Section 464(c)(3) of the Act is amended by inserting "(A)" immediately after "(3)" and by adding at the end thereof the following:

"(B) Pursuant to uniform criteria established by the Secretary, the repayment period for any student borrower who during the repayment period is a low-income individual may be extended for a period not to exceed ten years and the repayment schedule may be adjusted to reflect the income of that individual.".

COLLECTION PRACTICES

SEC. 445. (a) Section 463(a) of the Act (as amended by section 442(b)(3)) is further amended by inserting after paragraph (6) the following new paragraph:

> *"(7) provide that, notwithstanding any other provision of law, the Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to him, from whatever source such information may be derived;".*

(b)(1) Section 463 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1) For the purpose of promoting responsible repayment of loans made pursuant to this part, the Secretary shall enter into cooperative agreements with credit bureau organizations to provide for the exchange of information concerning student borrowers concerning whom the Secretary has received a referral pursuant to section 467.

"(2) Each cooperative agreement made pursuant to paragraph (1) shall be made in accordance with requirements of section 430(b)(2) except that such agreement shall provide for the disclosure by the

Secretary to such organizations, with respect to any loan for which the Secretary is responsible, of—

"(A) the date of disbursement and the amount of any such loan;

"(B) information concerning collection of any such loan, including information concerning the status of any defaulted loan; and

"(C) the date of cancellation of the note upon completion of repayment by the borrower of any such loan.".

(2) Section 464(c)(1) of such Act is amended by striking out "and" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; and", and by adding at the end thereof the following new subparagraph:

"(I) shall contain a notice of the system of disclosure of information concerning default on such loan to credit bureau organizations under section 463(c).".

(c) Section 467 of the Act is amended by inserting "(a)" after "SEC. 467." and by adding at the end thereof the following new subsection:

"(b) The Secretary shall continue to attempt to collect any loan assigned under section 463(a)(5) or (6) or referred under subsection (a) of this section until a date which is not earlier than four years after the date of default (determined in a manner consistent with section 430(e)).".

INTEREST RATES

SEC. 446. Section 464(c)(1)(D) of the Act is amended by inserting immediately after "3 per centum per annum" the following: "or 4 per centum per annum in the case of any loan made on or after October 1, 1980".

STUDENT LOAN INFORMATION PROGRAM AUTHORIZED

SEC. 447. (a) Section 463(a) of the Act (as amended by section 442(b)(3)) is amended by inserting immediately after paragraph (7) the following new paragraph:

"(8) provide assurances that the institution will comply with the provisions of section 463A;".

(b) Part E of title IV of the Act is amended by adding after section 463 the following new section:

"STUDENT LOAN INFORMATION BY INSTITUTIONS

"SEC. 463A. Each institution of higher education, in order to carry out the provisions of section 463(a)(7), shall, at the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on loans made under this part to the student borrower. The loan information required by this section shall include—

"(1) the yearly and cumulative maximum amounts that may be borrowed by a student;

"(2) the terms on which repayment will begin;

"(3) the maximum number of years in which the loan must be repaid;

"(4) the interest rate that will be repaid and the minimum amount of required monthly payment;

"(5) any special options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

"(6) a definition of default and the consequences to the borrower if the borrower should default, including a description of any arrangements made with credit bureau organizations; and

"(7) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.".

MISCELLANEOUS AMENDMENTS

SEC. 448. (a) Section 462 of the Act is amended by striking out subsection (d).

(b) Section 463(b) of the Act is amended by striking out "section 493" and inserting in lieu thereof "section 485".

(c)(1) Section 464(b) of the Act is amended to read as follows:

"(b) A loan from a student loan fund assisted under this part may be made only to a student who demonstrates financial need in accordance with section 482 and who meets the requirements of section 484.".

(2) Section 464(e) of the Act is repealed.

(d) Section 465(a)(2) of the Act is amended by striking out the last sentence and inserting in lieu thereof the following: "For purposes of this paragraph, the term 'handicapped children' has the meaning set forth in section 602(1) of the Education of the Handicapped Act.".

(e) Section 465(a) of the Act is amended by adding at the end thereof the following new paragraph:

"(5) The amount of a loan, and interest on a loan, which is canceled under this section shall not be considered income for purposes of the Internal Revenue Code of 1954.".

PART E—GENERAL PROVISIONS

STUDENT ASSISTANCE GENERAL PROVISIONS

SEC. 451. (a) Part F of title IV of the Act is amended to read as follows:

"PART F—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

"DEFINITIONS

"SEC. 481. (a)(1) For the purposes of this title, except subpart 6 of part A and part B, the term 'institution of higher education' includes, in addition to the institutions covered by the definition contained in section 1201(a)—

"(A) a proprietary institution of higher education;

"(B) a postsecondary vocational institution;

"(C) a department, division, or other administrative unit in a college or university which provides primarily or exclusively an

accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing; and

"(D) a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree.

"(2) The term 'accredited' when applied to any program of nurse education means a program accredited by a recognized body or bodies approved for such purpose by the Secretary.

"(b) For the purposes of this section, the term 'proprietary institution of higher education' means a school (1) which provides not less than a six-month program of training to prepare students for gainful employment in a recognized occupation, (2) which meets the requirements of clauses (1) and (2) of section 1201(a), (3) which does not meet the requirement of clause (4) of section 1201(a), (4) which is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose, and (5) which has been in existence for at least two years. Such term also includes a proprietary educational institution in any State which, in lieu of the requirement in clause (1) of section 1201(a), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution. For purposes of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.

"(c) For the purposes of this section, the term 'postsecondary vocational institution' means a school (1) which provides not less than a six-month program of training to prepare students for gainful employment in a recognized occupation, (2) which meets the requirements of clauses (1), (2), (4), and (5) of section 1201(a), and (3) which has been in existence for at least two years. Such term also includes an educational institution in any State which, in lieu of the requirement in clause (1) of section 1201(a), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"(d) For the purpose of any program under this title, the term 'academic year' shall be defined by the Secretary by regulation.

"NEED ANALYSIS

"SEC. 482. (a)(1) For the purpose of determining a student's need for financial assistance under this title (other than under subpart 3 of part A and under part B), the Secretary shall publish in the Federal Register, no later than July 1, 1981, April 1, 1982, and on April 1 of each succeeding calendar year, a proposed schedule of expected family contributions for the academic year which begins after July 1 of the calendar year which succeeds such calendar year for various levels of family income, which, except as is otherwise provided in paragraph (2), together with any amendments thereto, shall

become effective July 1 of the calendar year which succeeds such calendar year. During the thirty-day period following such publication the Secretary shall provide interested parties with an opportunity to present their views and make recommendations with respect to such schedule. Such schedule shall be adjusted annually.

"(2) The schedule of expected family contributions required for each academic year shall be submitted to the President of the Senate and the Speaker of the House of Representatives not later than the time of its publication in the Federal Register. If either the Senate or the House of Representatives adopts, prior to October 1, 1981, July 1, 1982, or July 1 of any succeeding year following the submission of such schedule as required by this paragraph, a resolution of disapproval of such schedule, in whole or in part, the Secretary shall publish a new schedule of expected family contributions in the Federal Register not later than fifteen days after the adoption of such resolution of disapproval. Such new schedule shall take into consideration such recommendations as may be made in either House in connection with such resolution. If within fifteen days following the submission of the revised schedule either the Senate or the House of Representatives again adopts a resolution of disapproval, in whole or in part, of such revised schedule, the Secretary shall publish a new schedule of expected family contributions in the Federal Register not later than fifteen days after the adoption of such resolution of disapproval. This procedure shall be repeated until neither the Senate nor the House of Representatives adopts a resolution of disapproval. The Secretary shall publish together with each new schedule a statement identifying the recommendations made in either House in connection with such resolution of disapproval and explaining his reasons for the new schedule.

"(3) The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall develop a proposed schedule of expected family contributions each year for publication in the Federal Register.

"(b)(1) For the purposes of this section, the term 'family contribution' with respect to any student means the amount which the student and his family may be reasonably expected to contribute toward his postsecondary education for the academic year for which the determination is made, as determined in accordance with regulations. In promulgating such regulations, the Secretary shall follow the basic criteria set forth in paragraph (2) of this subsection.

"(2) The basic criteria to be followed in promulgating regulations with respect to expected family contributions are as follows:

"(A) The amount of the effective income of the student or the effective family income of the student's parents.

"(B) The number of dependents of the family of the student.

"(C) The number of dependents of the student's family who are in attendance in a program of postsecondary education and for whom the family may be reasonably expected to contribute for their postsecondary education.

"(D) The amount of the assets of the student and the assets of the student's family.

"(E) Any unusual expenses of the student or his family, such as unusual medical expenses and those which may arise from a catastrophe.

"(F) Any educational expenses of other dependent children in the family.

"(3) For purposes of subparagraph (A) of paragraph (2), the term 'effective family income' with respect to a student, means the annual adjusted family income, as determined in accordance with regulations prescribed by the Secretary, received by the parents or legal guardians of the student minus Federal, State and local taxes paid or payable with respect to such income, and includes any amount paid under the Social Security Act to, or on account of, the student which would not be paid if he were not a student and one-half any amount paid the student under chapters 34 and 35 of title 38, United States Code. The term 'effective family income' includes any effective student income after any offset as determined by regulations prescribed by the Secretary.

"(4) In determining the expected family contribution under this section for any academic year after academic year 1978–1979, an assessment rate of not more than 14 per centum shall be applied to parental discretionary income for families with adjusted gross family income which does not exceed $25,000 for each such year. The Secretary may set an assessment rate or a series of assessment rates to be applied to parental discretionary income for families with adjusted gross incomes which exceed $25,000 for each such year for income in excess of $25,000.

"(5) For the purposes of paragraph (2)(D), the parental assets shall be determined by—

"(A) excluding all equity in a single principal place of residence from the computation of assets;

"(B) deducting an asset reserve of not less than $10,000 from the net value of all assets; and

"(C) if net assets include farm or business assets, deducting an additional asset reserve of not less than $50,000 from the net assets.

"(c)(1) The Secretary shall promulgate special regulations for determining the expected family contribution and effective family income of an independent student. Such special regulations shall be consistent with the basic criteria set forth in paragraph (2) of subsection (b). In addition, such regulations shall—

"(A) provide that the portion of assets which shall be exempt from assessment for contribution for an independent student who has one or more dependents shall be the same as the portion so exempt for the family of a dependent student;

"(B) provide that the rate of assessment for contribution on that portion of assets of such an independent student which is not exempt under subparagraph (A) shall be the same as the rate applied to the comparable portion of assets of the family of a dependent student;

"(C) in establishing a portion of effective family income which shall be exempt from assessment for contribution by reason of subsistence requirements of independent students who have no dependents, use the same method for computation of such portion for such students as is used for dependent students and for independent students who have dependents;

"(D) in determining the family contribution for an independent student who has one or more dependents, provide that the assessment rate which is to be applied to the student's discre-

tionary income shall be the same as the assessment rate applied to discretionary income of the family of a dependent student; and

"(E) provide that a married student shall be considered independent if, notwithstanding prior dependency status, such student certifies that in the year of application he (i) will not live with parents for more than six weeks; (ii) will not be claimed by parents as a dependent on any tax return filed for purposes of Federal income taxes; and (iii) will not receive more than $750 in support from parents.

"(2) For purposes of this title, the term 'independent student' means a student who is determined, pursuant to regulations of the Secretary, to be independent of the parents or legal guardians of the student.

"(d) For the purposes of this title, the term 'cost of attendance' means—

"(1) tuition and fees normally assessed a full-time student at the institution at which the student is in attendance;

"(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses;

"(3) an allowance for room and board costs incurred by the student which—

"(A) beginning in academic year 1981–1982 shall be an allowance of not less than $1,150 for a student without dependents residing at home with parents;

"(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board;

"(C) for all other students without dependents, shall be a standard allowance determined by the institution based on the expenses reasonably incurred by such students for room and board; and

"(D) for students with dependents, shall be an allowance based on the expenses reasonably incurred by such students for room and board;

"(4) for a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, and travel and room and board costs incurred specifically in fulfilling a required period of residential training;

"(5) for a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study;

"(6) for a student with dependent children, an allowance based on the expenses reasonably incurred for child care; and

"(7) for a handicapped student, an allowance for those expenses related to his handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies.

"(e) Nothing in this section shall prohibit an institution, in individual cases, from adjusting the financial need determination for a student aided under subpart 2 of part A or part C or E of this title if the basis for such adjustment is documented.

"FORMS AND REGULATIONS

"Sec. 483. (a) The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall prescribe a common Federal financial aid application form to be used to determine the need and eligibility of a student for financial assistance under this title (other than under subpart 3 of part A and under part B). No student or parent of a student shall be charged a fee for processing the data elements of the form prescribed by the Secretary. The Secretary shall, to the extent practicable, enter into not less than three contracts with States, institutions of higher education, or private organizations for the purpose of processing the application required under this subsection and issuing eligibility reports. The Secretary may also contract for additional services to assure coordination of financial aid from both Federal and non-Federal sources, and to provide information, training, and similar services to institutions, aid officers, counselors, lenders, parents and students. Nothing in this section shall prohibit States, institutions, or private organizations from simultaneously collecting data elements, in addition to the data elements prescribed by the Secretary, as may be necessary to determine the eligibility of a student for financial aid funds not covered by this title (or covered under subpart 3 of part A or under part B of this title).

"(b) Copies of all rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this title shall be provided to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives at least thirty days prior to their effective date.

"(c) To help insure access to postsecondary education by providing early notice to students of their potential eligibility for financial aid, the Secretary is authorized to enter into contracts with States, institutions of higher education, and private organizations for the purpose of—

"(1) developing a common pre-eligibility Federal financial aid form,

"(2) distributing and processing such form on a year-round basis free of charge to students, and

"(3) issuing on the basis of information reported by the student on such form a pre-eligibility index designed to estimate the amount of Federal (and, if feasible, non-Federal) funds for which the student might qualify in later completing and submitting the application form called for under this section.

The Secretary shall widely disseminate the pre-eligibility form through post offices and other appropriate Federal installations, schools, postsecondary institutions, libraries, and community-based agencies, including projects assisted under subpart 4 of part A of this title.

"STUDENT ELIGIBILITY

"Sec. 484. (a) In order to receive any grant, loan, or work assistance under this title, a student must—

"(1) be enrolled or accepted for enrollment at an institution of higher education that is an eligible institution in accordance with the provisions of section 487;

"(2) except as otherwise specifically provided, be carrying or planning to carry at least one-half the normal full-time workload for the course of study the student is pursuing, as determined by the institution;

"(3) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing according to the standards and practices of the institution at which the student is in attendance;

"(4) not owe a refund on grants previously received at such institution under this title, or be in default on any loan from a student loan fund at such institution provided for in part E, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at such institution; and

"(5) file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution.

"(b) Any permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands shall be eligible for assistance under this title to the same extent that citizens of the United States are eligible for such assistance.

"INSTITUTIONAL AND FINANCIAL ASSISTANCE INFORMATION FOR STUDENTS

"SEC. 485. (a)(1) Each eligible institution participating in any program under this title shall carry out information dissemination activities for prospective and enrolled students regarding the institution and financial assistance under this title. The information required by this section shall be produced and be made readily available, through appropriate publications and mailings, to all current students, and to any prospective student upon request. The information required by this section shall accurately describe—

"(A) the student financial assistance programs available to students who enroll at such institution;

"(B) the methods by which such assistance is distributed among student recipients who enroll at such institution;

"(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such application;

"(D) the rights and responsibilities of students receiving financial assistance under this title;

"(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;

"(F) a statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of cost, as described in clause (E) of this paragraph;

"(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, and (iii) the faculty and other instructional personnel;

"(H) each person designated under subsection (b) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection;

"(I) special facilities and services available to handicapped students;

"(J) the names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs, and the procedures under which any current or prospective student may obtain or review upon request a copy of the documents describing the institution's accreditation, approval, or licensing; and

"(K) the standards which the student must maintain in order to be considered to be making satisfactory progress, pursuant to section 484(a)(3).

"(2) For purposes of this section, the term 'prospective student' means any individual who has contacted an eligible institution requesting information concerning admission to that institution.

"(b) Each eligible institution shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in subsection (a). The Secretary may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution in which the total enrollment, or the portion of the enrollment participating in programs under this title at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

"(c) The Secretary shall make available to eligible institutions descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (1) assist students in gaining information through institutional sources, and (2) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs.

"TRAINING IN FINANCIAL AID AND STUDENT SUPPORT SERVICES

"SEC. 486. (a) The Secretary is authorized to enter into contracts with appropriate public agencies or nonprofit private organizations or institutions of higher education to provide training for financial aid administrators, student peer counselors, student staff or volun-

teers, and other part-time staff and volunteers who provide financial aid, admissions and academic counseling and outreach, and student support programs in postsecondary education in postseondary institutions, communities or statewide programs.

"(b) Financial assistance under this section may be used for—

"(1) development of materials and inservice training and career awareness programs;

"(2) operation of short-term training institutes designed to improve the skills and career awareness of participants in such institutes; and

"(3) special programs to assist in training of students and part-time staff or volunteers at institutions eligible for assistance under title III of this Act.

"(c) There are authorized to be appropriated $1,000,000 to carry out the provisions of this section for fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1985.

"PROGRAM PARTICIPATION AGREEMENTS

"SEC. 487. (a) In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for purposes of that program) and shall, except with respect to a program under subpart 3 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

"(1) The institution will use funds received by it for any program under this title solely for the purposes specified in, and in accordance with, the provisions of that program.

"(2) In the case of an institution participating in any program authorized under subpart 2 of part A or part C of this title for any fiscal year, the institution will continue to spend in its own scholarship and student aid program, from sources other than funds received under such parts, not less than the average expenditures per year made for that purpose during the most recent period of three fiscal years preceding the effective date of the program participation agreement, except that, under special and unusual circumstances prescribed by regulation, the Secretary is authorized to waive the requirements of this paragraph.

"(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this title.

"(4) The institution will comply with the provisions of subsection (b) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

"(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part E, to holders of loans made to the institution's students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purposes of this title.

"(6) The institution will comply with the requirements of section 485.

"(b)(1) Notwithstanding any other provisions of this title, the Secretary is authorized to prescribe such regulations as may be necessary to provide for—

"(A) a fiscal audit of an eligible institution with regard to any funds obtained by it under this title or obtained from a student who has a loan insured or guaranteed by the Secretary under this title;

"(B) the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title;

"(C) the establishment, by each eligible institution under part B responsible for furnishing to the lender the statement required by section 428(a)(2)(A)(i), of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than sixty days after such termination or failure to re-enroll; and

"(D) the limitation, suspension, or termination of the eligibility for any program under this title of any otherwise eligible institution, or the imposition of a civil penalty under paragraph (2)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing on the record, that such institution has violated or failed to carry out any provision of this title or any regulation prescribed under this title, except that no period of suspension under this section shall exceed sixty days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time.

"(2)(A) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this title of any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

"(B)(i) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution—

"(I) has violated or failed to carry out any provision of this title or any regulation prescribed under this title; or

"(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed $25,000 for each violation or misrepresentation.

"(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the

institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

"(3) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

"(c) For the purpose of this section the term 'eligible institution' means any such institution described in section 435(a) of this Act.

"TRANSFER OF ALLOTMENTS

"SEC. 488. Up to 10 per centum of the allotment of an eligible institution for a fiscal year under section 413D or 446 of this Act, may be transferred to, and used for the purposes of, the institution's allotment under the other section within the discretion of such institution in order to offer an arrangement of types of aid, including institutional and State aid, which best fits the needs of each individual student. The Secretary shall have no control over such transfer, except as specifically authorized, except for the collection and dissemination of information.

"ADMINISTRATIVE EXPENSES

"SEC. 489. (a) From the sums appropriated for any fiscal year for purposes of the program authorized under subpart 1 of part A, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 487, an amount equal to $10 for each student at that institution who receives assistance under subpart 1 of part A. In addition, an institution which has entered into an agreement with the Secretary under subpart 2 of part A or part C (other than section 448), of this title or under part E of this title shall be entitled for each fiscal year for which it receives an allotment by payment under any such part to a payment for the purposes set forth in subsection (b). The payment for a fiscal year shall be payable from each such allotment by payment in accordance with regulations of the Secretary and shall be equal to 5 per centum of the institution's first $2,750,000 of expenditures plus 4 per centum of the institution's expenditures greater than $2,750,000 and less than $5,500,000, plus 3 per centum of the institution's expenditures in excess of $5,500,000 during the fiscal year from the sum of its grants to students under subpart 2 of part A, its expenditures during such fiscal year under part C for compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part E, excluding the principal amount of any such loans which the institution has agreed to assign under section 463(a)(6)(B). The payment for a fiscal year for the purpose of subsection (b) with respect to section 448 shall be payable from each allotment under part C in accordance with regulations of the Secretary, and shall be 10 per centum of the institution's expenditures during such fiscal year under such section.

"(b) The sums paid to institutions under this part are for the sole purpose of offsetting the administrative costs of the programs described in subsection (a).

"CRIMINAL PENALTIES

"SEC. 490. (a) Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds, assets, or property provided or insured under this title shall be fined not more than $10,000 or imprisoned for not more than five years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud, false statement, or forgery does not exceed $200, the fine shall not be more than $1,000 and imprisonment shall not exceed one year, or both.

"(b) Any person who knowingly and willfully makes any false statement, furnishes any false information, or conceals any material information in connection with the assignment of a loan which is made or insured under this title shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) Any person who knowingly and willfully makes an unlawful payment to an eligible lender under part B as an inducement to make, or to acquire by assignment, a loan insured under that part shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

"(d) Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under this title with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part, shall upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

"NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

"SEC. 491. (a) There is established, as an independent agency within the executive branch, a National Commission on Student Financial Assistance (referred to in this section as the 'Commission').

"(b)(1) The Commission shall be composed of twelve members. Four of the members shall be appointed by the President. Four of the members shall be appointed by the Speaker of the House, including two Members of the House, one from each political party. Four of the members shall be appointed by the President pro tempore of the Senate, including two Members of the Senate, one from each political party.

"(2) The Chairman shall be designated by the President from among the members appointed by him. If the President has not appointed four members of the Commission and designated a Chairman within sixty days of the enactment of this Act, the members of the Commission appointed by the Speaker of the House and the President pro tempore of the Senate shall elect a Chairman who shall continue to serve for the duration of the Commission.

"(3) Any vacancy in the Commission shall be filled by appointment of the same person who appointed the person who has left the Commission.

"(c)(1) The Commission shall make a study of the following issues:

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"(A) more effective means to reduce default, fraud, abuse, and delinquency in the programs authorized by this title;

"(B) the appropriate balance between loans and other sources of financing postsecondary education from the point of view of the needs and welfare of students and their parents;

"(C) the adequacy of capital to serve the postsecondary educational needs of students or their parents for credit; if adequate credit is available, the likelihood it will continue to remain available; if adequate credit is not available, the likelihood it will become available and the steps that can be taken to provide adequate credit for the postsecondary educational needs of students;

"(D) the impact of various levels of student borrowing, grants, gift aid, and employment on the educational performance, future career choices, and future educational choices of students;

"(E) the impact of various levels of parent borrowing for postsecondary education on parents;

"(F) the appropriate annual and aggregate self-help limits and gift aid for parents, dependent students, and independent students;

"(G) the most appropriate mechanism for the effective and efficient origination, servicing, and collection of student loans and for the effective and efficient delivery of other forms of student assistance;

"(H) the most appropriate source or sources of student loan capital considering both the cost and the reliability of adequate capital availability;

"(I) the appropriate level of public subsidy to students and parents for the cost of capital for student loans;

"(J) the impact of the availability of Federal student financial assistance on the availability of student financial assistance from all other sources;

"(K) the impact of the availability of student assistance, particularly from Federal sources, on the level of postsecondary education costs;

"(L) the most appropriate mechanism to provide students and parents with the flexible repayment options and opportunities for consolidation of student loan indebtedness;

"(M) means to remove barriers to capital availability caused by patterns of lender discrimination;

"(N) the cost to the Federal Government of the arbitrage derived from revenue bonds issued by agencies for the purpose of making or purchasing loans under part B of this title and the appropriate role of such bonds as a mechanism for raising student loan capital; and

"(O) the effectiveness in serving the purposes of this title of the existing formulas for allotment among the States in subpart 2 of part A and in parts C and E of this title.

"(2) The Commission shall make a study of the insurance premium charged by an insurer pursuant to section 428(b)(1)(H) in order to determine if the rate of the insurance premium exceeds the rate necessary to protect the reserves of the insurer and to determine if a statutory limit should be enacted for the rate of such premium.

"(3)(A) The Commission shall make a study of an improved method or methods for determination of the quarterly rate of special allowances paid under part B of this title which the Commission determines will carry out the objectives set forth in section 438(a).

"(B) The Commission shall make every effort to reach a unanimous decision with respect to the method for determination of the quarterly rate of the special allowances required to be studied by this paragraph.

"(C) In developing the method for the determination of the quarterly rate of the special allowances under this paragraph, the Commission shall consider—

"(i) the experiences of students and eligible lenders under the method in operation during the period of the study,

"(ii) the administrative costs of various types of eligible lenders under part B of title IV,

"(iii) relevant and widely available financial indicators which accurately reflect the costs of capital invested in programs under such part, or substitute financial indicators which equitably represent the cost of such capital,

"(iv) an administrative mechanism necessary to produce a prompt and rapidly disseminated determination of the quarterly rate of the special allowances, in order to avoid delays in the determination and dissemination of that rate and in the actual payment of the special allowances to eligible lenders, and

"(v) such other factors as the Commission considers necessary to carry out the purposes of section 438(a).

"(4) The Commission shall conduct a study to determine if institutions of higher education which meet the requirements of section 1201(a) (other than the provisions of subclauses (A) and (B) of clause (5) of such section), but fail to meet such requirements because the institution is not located in a State, should be included in the definition of institution of higher education under section 481.

"(5) The Commission shall conduct a study to determine if student eligibility for financial assistance under section 484 on the basis of maintaining satisfactory academic progress should include provisions which would require that a student complete successfully a specified portion of the workload undertaken during the academic period for which assistance was received by the student.

"(6) The Commission shall, in consultation with the National Center for Education Statistics, conduct longitudinal studies of high school students in order to determine the effect of federally authorized student assistance programs upon postsecondary education access and choices of high school students.

"(7)(A) The Commission shall, in consultation with appropriate higher education associations and representatives from institutions of higher education, collect data necessary for the study of graduate education throughout the United States required by this paragraph. Such study shall—

"(i) analyze trends and shortcomings in the sources of support available to students for the financing of graduate education, and compare the nature and level of support available in the various academic disciplines, including sources of support from student assistance and research programs sponsored by—

"(I) the Federal Government,

"(II) State and local governments,

"(III) foundations, corporations, and other private entities, and

"(IV) institutions of higher education, and

in addition, consider the resources of the students and the students' families;

"(ii) examine the extent to which students may be dissuaded from pursuing graduate education on financial grounds, to the consequent detriment of—

"(I) the major fields of knowledge which need to attract the most able and talented students of each generation if they are to remain strong and vigorous; and

"(II) the Nation as a whole, if some of its most promising students are precluded because of financial circumstances from developing their capacities and abilities to the fullest possible extent;

"(iii) investigate existing and projected levels of graduate student indebtedness, and consider the implications (for the students involved and for the health of graduate education generally) or existing and projected expectations for borrowing to meet the costs of graduate education;

"(iv) assess the desirability of modifying existing Federal fellowship and student assistance programs or establishing a new Federal graduate student assistance program in which the selection of students and the amounts of their awards are based on merit or financial need or both, particularly with regard to the special needs of students in the humanities and social sciences or other disciplines; and

"(v) examine and assess the financial and educational needs of individuals from disadvantaged backgrounds in order to enhance their participation in graduate and professional education and their potential for employment in occupational areas where these individuals are underrepresented.

"(B) In conducting the study described in this paragraph, the Commission shall consult with representatives of the National Science Foundation, the National Endowment for the Humanities, the National Endowment for the Arts, and representatives of higher education institutions and associations, learned societies, and professional organizations.

"(8)(A) The Commission shall conduct a study of a proposal to amend the guaranteed student loan program authorized by part B of title IV by recapturing interest subsidies from borrowers who do not obtain loans for undergraduate study under such part by reason of need or who borrow under such part for graduate study to the extent such loans are made for graduate study. In conducting such study, the Commission shall analyze the long term effect on the Budget of the United States of recapturing the interest subsidy in accordance with such proposal outlined in this paragraph and the impact of such proposal on the availability of funds for postsecondary education for students.

"(B) In conducting the study under this paragraph, the Commission shall also consider other alternative proposals designed to reduce the cost of the guaranteed student loan program under part B of title IV in fiscal years subsequent to fiscal year 1982 and the impact of such proposal on the availability of funds for postsecondary education for students.

"(d)(1) The Commission shall prepare and submit reports and recommendations to the President and to the Congress on the studies required to be conducted under subsection (c) of this section. The reports for the studies required by paragraphs (2), (3), (5), and (8) of such subsection shall be submitted as soon as practicable but in no event later than one year after the date of the first meeting of the Commission. The reports for the studies required by paragraphs (1), (4), (6), and (7) shall be submitted as soon as practicable but in no event later than July 1, 1983.

"(2) Any recommendations and reports submitted under this paragraph which contemplate changes in Federal legislation shall include draft legislation to accomplish the recommendations.

"(3) The Commission shall cease to exist 90 days following the submission of its final report.

"(e)(1) Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(2) Members of the Commission who are not officers or full-time employees of the United States may each receive $150 per diem when engaged in the actual performance of duties vested in the Commission. In addition, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(f) Such personnel as the Commission deems necessary may be appointed by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS-18 of the General Schedule.

"(g)(1) The Commission or, on the authorization of the Commission, any committee thereof, may, for the purpose of carrying out the provisions of the Act, hold such hearings and sit and act at such times and such places within the United States as the Commission or such committee may deem advisable.

"(2) In carrying out its duties under the Act, the Commission shall consult with other Federal agencies, representatives of State and local governments, and private organizations to the extent feasible.

"(3) The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this section, and each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.

"(4) For the purpose of securing the necessary data and information the Commission may enter into contracts with universities, research institutions, foundations, and other competent public or private agencies. For such purpose, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

"(5) The heads of all Federal agencies are, to the extent not prohibited by law, directed to cooperate with the Commission in carrying out this section.

"(6) The Commission is authorized to utilize, with their consent, the services, personnel, information and facilities of other Federal, State, local and private agencies with or without reimbursement.

"(7) The Commission shall have authority to accept in the name of the United States, grants, gifts, or bequests of money for immediate disbursement in furtherance of the functions of the Commission. Such grants, gifts, or bequests, after acceptance by the Commission, shall be paid by the donor or his representative to the Treasurer of the United States whose receipts shall be their acquittance. The Treasurer of the United States shall enter them in a special account to the credit of the Commission for the purposes in each case specified.

"(8) Six members of the Commission shall constitute a quorum, but a lesser number of two or more may conduct hearings.

"(h) There is authorized to be appropriated an amount not to exceed a total of $10,000,000 for fiscal years beginning on or after October 1, 1980, to carry out the provisions of this section, which shall remain available until expended or until the termination of the Commission, whichever occurs first.".

(b) Section 440 of the Act is repealed.

(c) The amendments made by section 6 of the Middle Income Student Assistance Act shall take effect on July 1, 1972.

(d) Section 438 of the Act is amended by striking out subsections (e), (f), and (g).

TITLE V—AMENDMENT AND EXTENSION OF TITLE V OF THE HIGHER EDUCATION ACT OF 1965

EXTENSION OF PROGRAMS

SEC. 501. (a) Section 511(b) of the Act is amended to read as follows:

"(b) For the purpose of carrying out the provisions of this part, there are authorized to be appropriated $45,000,000 for the fiscal year 1981, $55,000,000 for the fiscal year 1982, $65,000,000 for the fiscal year 1983, $75,000,000 for the fiscal year 1984, and $85,000,000 for the fiscal year 1985.".

(b) The first sentence of section 531 of the Act is amended by adding the following: "There are authorized to be apppropriated $20,000,000 for the fiscal year 1981, $30,000,000 for the fiscal year 1982, $40,000,000 for the fiscal year 1983, $50,000,000 for the fiscal year 1984, and $55,000,000 for the fiscal year 1985 to carry out the provisions of this part.".

TEACHER CORPS AMENDMENTS

SEC. 502. (a) Section 513(a) of the Act is amended by striking out "and" at the end of paragraph (8), by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and" and by inserting after such paragraph the following:

"(10) make grants to schools, colleges and departments of education and local educational agencies with high concentrations of low income students for the purpose of—

"(A) developing, improving or expanding curriculum offerings or instructional materials for the purpose of improving instruction in the areas of—

"(i) biological sciences, natural sciences and earth sciences,

"(ii) physical sciences, and

"(iii) mathematics; and

"(B) providing training opportunities for teachers to increase their effectiveness in developing instructional materials and teaching science and mathematics related subject matter.".

(b) Section 513(c)(2) of the Act is amended—

(1) by striking out "Not to exceed 5 per centum" and inserting in lieu thereof "Not to exceed 2 per centum"; and

(2) by striking out "Puerto Rico," each place it appears.

(c) Section 513(d) of the Act is amended by striking out "section 205(a)(2) of Public Law 874, Eighty-first Congress, as amended," and inserting in lieu thereof "section 130 of the Elementary and Secondary Education Act of 1965".

(d) Section 513(f) of the Act is amended by striking out "goal" and inserting in lieu thereof "the goal".

(e) Section 514(a)(2) of the Act is amended by striking out ", not to exceed $150 per week plus $15 per week for each dependent".

TEACHER CENTERS AMENDMENTS

SEC. 503. (a) Section 531 of the Act is amended by striking out "In the event that sums exceeding $50,000,000 are appropriated in any fiscal year for purposes of carrying out this part, each" and inserting in lieu thereof "Each".

(b) Section 532(a)(2) of the Act is amended—

(1) by striking out "local educational agency (or a combination of such agencies) which serve" and inserting in lieu thereof "local educational agency, a combination of such agencies, or an educational service agency which serves";

(2) by inserting "and, where desirable, in collaboration with one or more institutions of higher education which serve teachers" immediately after "experts as may be necessary";

(3) by inserting ", including the use of technology and telecommunications" immediately before the semicolon in subparagraph (A);

(4) by inserting ", testing," immediately after "curriculum development" in subparagraph (B).

(c) The first sentence of section 532(b) of the Act is amended by inserting before the period "and, where appropriate, bilingual education teachers".

TEACHER TRAINING

SEC. 504. Section 533 of the Act is amended to read as follows:

"TRAINING FOR HIGHER EDUCATION PERSONNEL

"SEC. 533. (a) The Secretary is authorized to make grants to schools of education for the purposes of—

"(1) developing model projects within schools of education to carry out improved preservice or support activities for preparing elementary or secondary school teachers;

"(2) achieving diversification and redirection of education programs for elementary and secondary school teachers in order to make maximum use of human resources in the fields of education and public service;

"(3) retraining faculty members of such schools of education to provide courses of study for training elementary and secondary school teachers to teach in programs of career education, education of the gifted and talented children, education of handicapped individuals, community education, adult education programs, earth sciences, and other related programs;

"(4) training and orientation projects for faculty members of schools of education designed to prepare the faculty to teach and train personnel to work in conjunction with personnel who carry out projects under the Comprehensive Employment and Training Act and under title VIII of this Act, relating to cooperative education and training of individuals to prepare for the workplace; and

"(5) training educational personnel who will specialize in the implementation of the urban and environmental policies of the United States, and for other areas of critical need within education which are developing or are likely to develop as provided in section 406(b)(5) of the General Education Provisions Act.

"(b) The Secretary is authorized to make grants to schools of education for the fiscal year 1981 and for each of the four succeeding years to carry out model projects for the purposes set forth in subsection (a). No grant may be made under this subsection unless an application is made to the Secretary, at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(c)(1) The Secretary is authorized to enter into agreements with consortia of schools of education for planning programs designed to help member schools of the consortium to diversify and redirect programs and curricula of the member schools of education.

"(2)(A) The Secretary shall develop criteria for determining the regions of the country in which consortia of schools of education are to be established.

"(B) No consortium may receive a grant in excess of $200,000 in any fiscal year under this section.

"(C) No cooperative agreement may be entered into under this section unless an application is submitted through the State education agency of the State in which the applicant is located. Each such State agency will review and approve the application to assure its consistency with the comprehensive plan mandated by sections 404(a)(12) and 522(2) of the Elementary and Secondary Education

Act of 1965. Such application shall be submitted at such time, in such manner, and containing or accompanied by such other information as the Secretary may reasonably require.

"(d) For purposes of this section, the term 'schools of education' means institutions of higher education, and administrative units of institutions of higher education, specializing in the training of individuals to serve as teachers, guidance and counseling personnel, administrative personnel, or other education specialists.".

TRAINING FOR TEACHERS OF HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

SEC. 505. (a) Title V of the Act is amended by adding after part B the following new part:

"PART C—TRAINING FOR ELEMENTARY AND SECONDARY SCHOOL TEACHERS TO TEACH HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

"GRANTS AUTHORIZED

"SEC. 541. (a) The Secretary is authorized to make grants, in accordance with the provisions of this part, to State educational agencies to enable such agencies to support a fellowship program of stipends and allowances to institutions of higher education for teachers to be trained to provide special education for handicapped children.

"(b) The Secretary shall establish criteria for—

"(1) determining if there is a shortage of teachers in the area of special education for handicapped children in the State;

"(2) assuring that the institutions of higher education, at which recipients of fellowships awarded under this part are pursuing courses of study, offer a program designed to prepare such recipients in the area of special education for handicapped children; and

"(3) assuring that individuals trained with assistance under this part receive specialized training in the subject areas in which there is the greatest need for such teachers.

"(c) The Secretary shall assure an equitable distribution among the States of grants made under this part, consistent with criteria established under subsection (b).

"APPLICATION

"SEC. 542. (a) No grant may be made under this part unless an application is made by a State educational agency at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall—

"(1) describe a fellowship program under which the State will make stipends to recipients and make allowances to institutions of higher education, in accordance with the provisions of this part, for teachers and other specialists to be trained in special education for handicapped children;

"(2) provide assurances that each recipient of a fellowship under this part will enter into an agreement with the State under which the recipient will—

"(A) within the five-year period after the completion of the training for which the fellowship was awarded, teach for a period of not less than two years in an elementary or secondary school of a local educational agency of that State, a public elementary or secondary school of that State, or a public educational program approved by the local educational agency or the State, which has, or has provided assurances that it will have, a special education program for handicapped children, or

"(B) repay all of the stipend awarded to the recipient plus the allowances paid to any institution of higher education based upon that fellowship in the event that the conditions of clause (A) are not complied with, except when such conditions are not complied with for reasons beyond a recipient's control;

"(3) provide procedures under which recipients of fellowships who teach, for reasons beyond their control, less than the two-year period required under clause (2) of this subsection will have the repayment requirement reduced according to a schedule established by the State agency;

"(4) provide procedures under which stipends and institution of higher education allowances will be paid by the State agency in accordance with the provisions of this part; and

"(5) provide that the State agency will make continuing efforts to encourage recipients of fellowships under this part to continue to provide special education for handicapped children in areas where there is a shortage of such teachers.

"(b) The Secretary shall approve any application which meets the requirements of subsection (a) of this section. Prior to approving any applications under this section, the Secretary shall prepare regulations setting forth detailed requirements with respect to clauses (2) and (3) of subsection (a).

"STIPENDS AND INSTITUTION OF HIGHER EDUCATION ALLOWANCES

"SEC. 543. (a)(1) Each State educational agency receiving a grant under this part shall pay to individuals awarded fellowships under this part such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs.

"(2) No stipend may be paid to any single recipient in any one year in excess of $9,000.

"(b) Each State educational agency receiving a grant under this part shall (in addition to the stipends paid to persons under subsection (a)) pay to the institution of higher education at which such individual is pursuing a course of study such amounts as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the in-

stitution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"FELLOWSHIP CONDITIONS

"SEC. 544. (a) An individual awarded a fellowship under the provisions of this part shall continue to receive the payments provided in this part only during such periods as the State educational agency finds that the individual is maintaining satisfactory progress and devoting at least one-half of the full-time academic workload to study in the field in which such fellowship was awarded in an institution of higher education, and is not engaging in gainful employment other than employment approved by the Secretary by or pursuant to regulation. The amount of any payment to an individual engaged in such gainful employment shall be appropriately reduced pursuant to regulation.

"(b) The State educational agency is authorized to require reports containing such information in such form and to be filed at such times as it determines necessary from any individual awarded a fellowship under the provisions of this part. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education approved by the State educational agency, stating that such individual is making satisfactory progress in, and is devoting at least one-half of the full-time academic workload to, the program for which the fellowship was awarded.

"(c) No fellowship shall be awarded under this part for study at a school or department of divinity.

"DEFINITION

"SEC. 545. As used in this part 'special education' has the same meaning as prescribed by section 602(16) of the Education of the Handicapped Act.

"APPROPRIATIONS AUTHORIZED

"SEC. 546. There are authorized to be appropriated $2,000,000 for the fiscal year 1981, $3,000,000 for the fiscal year 1982, and $5,000,000 for the fiscal year 1983 and for each of the fiscal years ending prior to October 1, 1985 to carry out the provisions of this part."

(b) The Secretary shall promulgate regulations to carry out the amendment made by subsection (a) of this section not later than 30 days after the date of enactment of the Education Amendments of 1980.

EDUCATION PROFESSIONAL DEVELOPMENT

SEC. 506. Title V of the Act is further amended by adding after part C (as added by section 504) the following new part:

"Part D—Coordination of Education Professional Development

"FINDINGS

"Sec. 551. The Congress finds that—

"(1) many Federal programs have been enacted to train and develop education professionals;

"(2) such programs make Federal funds available to States, local education agencies, colleges and universities, and other agencies;

"(3) such programs should be coordinated at the Federal level to avoid unnecessary duplication of effort; and

"(4) such programs should be responsive to State needs and priorities for education professional development.

"POLICY

"Sec. 552. Federal programs which support education professional development should be administered in a coordinated manner, and the activities authorized under such programs should have complementary purposes whenever possible in order to provide the most effective use of Federal funds.

"OFFICE OF EDUCATION PROFESSIONAL DEVELOPMENT

"Sec. 553. (a) There is established in the Department an Office of Education Professional Development, the function of which is to review the operations of and to coordinate program activities among the various Federal education professional development programs within the Department to eliminate unnecessary duplication of effort.

"(b) The Office shall review on a biennial basis each education professional development program administered by the Department and shall—

"(1) identify inconsistencies in program policies and procedures;

"(2) identify overlap in program purpose and operations; and

"(3) coordinate program activities among the various Federal education professional development programs, and wherever necessary, make legislative recommendations to coordinate such programs.

"(c) The Secretary shall report biennially to the Congress on the findings and recommendations of the Office.".

TITLE VI—ESTABLISHMENT OF A NEW TITLE VI OF THE HIGHER EDUCATION ACT OF 1965

PROGRAMS AUTHORIZED

Sec. 601. (a) Title VI of the Higher Education Act is amended to read as follows:

"TITLE VI—INTERNATIONAL EDUCATION PROGRAMS

"PART A—INTERNATIONAL AND FOREIGN LANGUAGE STUDIES

"FINDINGS AND PURPOSES

"SEC. 601. (a) The Congress finds that—

"(1) knowledge of other countries is important in promoting mutual understanding and cooperation between nations;

"(2) strong American educational resources are a necessary base for strengthening our relations with other countries;

"(3) present and future generations of Americans should be given the opportunity to develop to the fullest extent possible their intellectual capacities in all areas of knowledge pertaining to other countries, peoples, and cultures; and

"(4) the economy of the United States and the long range security of the Nation are dependent upon acquiring such knowledge.

"(b) It is the purpose of this part to assist in the development of resources and trained personnel for international study, international research, and foreign language study and to coordinate programs of the Federal Government in the areas of international study and research and foreign language study.

"GRADUATE AND UNDERGRADUATE LANGUAGE AND AREA CENTERS

"SEC. 602. (a)(1) The Secretary is authorized to make grants to, and enter into contracts with, institutions of higher education, or combination of such institutions, for the purpose of establishing, strengthening, and operating graduate and undergraduate centers and programs which will be national resources for the teaching of any modern foreign language, for instruction in fields needed to provide a full understanding of the areas, regions, or countries in which such language is commonly used, or for research and training in international studies and the international aspects of professional and other fields of study.

"(2) Any such grant or contract may be used to pay all or part of the cost of establishing or operating a center or program, including the cost of faculty, staff, and student travel in foreign areas, regions, or countries, the cost of teaching and research materials, the cost of curriculum planning and development, the cost of bringing visiting scholars and faculty to the center to teach or to conduct research, and the cost of training and improvement of the staff, for the purpose of, and subject to such conditions as the Secretary finds necessary for, carrying out the objectives of this section.

"(3) The Secretary may make grants to centers described in paragraph (1) having important library collections for the maintenance of such collections.

"(b) The Secretary is also authorized to pay stipends to individuals undergoing such advanced training in any center or program approved by the Secretary under this part, including allowances for dependents and for travel for research and study in the United States and abroad.

"(c) No funds may be expended under this part for undergraduate travel except in accordance with rules prescribed by the Secretary

setting forth policies and procedures to assure that Federal funds made available for such travel are expended as part of a formal program of supervised study.

"INTERNATIONAL STUDIES CENTERS

"SEC. 603. (a)(1) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating graduate and undergraduate centers which will be regional resources to increase access to research and training in international and foreign language studies and the international aspects of professional and other fields of study. Activities carried out in such centers may be concentrated either on specific geographical areas of the world or on particular fields or issues in world affairs which concern one or more countries, or on both. In addition to providing training to students enrolled in the institution of higher education in which the center is located, the centers serving as regional resources shall, in order to qualify for assistance under this section, offer programs to strengthen international studies and foreign languages in the two-year and four-year colleges and universities in the region served by each such center.

"(2) The Secretary may also make grants to public and private nonprofit agencies and organizations, including professional and scholarly associations, whenever the Secretary determines that such grants will make an especially significant contribution to attaining the objectives of this section.

"(b) Grants under this section may be used to pay part or all of the cost of establishing, strengthening, equipping, and operating research and training centers, including the cost of teaching and research materials and resources, the cost of programs for bringing visiting scholars and faculty to the center, and the cost of training, improvement, and travel of the staff for the purposes of carrying out the provisions of this section. Such grants may also include funds for stipends (in such amounts as may be determined in accordance with regulations of the Secretary) to individuals undergoing training in such centers, including allowances for dependents and for travel for research and study in the United States and abroad.

"(c) Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the purposes of this section.

"UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAMS

"SEC. 604. (a) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, to assist them in planning, developing, and carrying out a comprehensive program to strengthen and improve undergraduate instruction in international studies and foreign languages. Grants made under this section may be for projects and activities which are an integral part of such a comprehensive program, such as—

"(1) planning for the development and expansion of undergraduate programs in international studies;

"(2) teaching, research, curriculum development, and other related activities;

"(3) training of faculty members in foreign countries;

"(4) expansion of foreign language courses;

"(5) programs under which foreign teachers and scholars may visit institutions as visiting faculty;

"(6) programs designed to integrate undergraduate education with terminal Masters Degree programs having an international emphasis; and

"(7) the development of an international dimension in teacher training.

"(b) The Secretary may also make grants to public and private nonprofit agencies and organizations, including professional and scholarly associations, whenever the Secretary determines such grants will make an especially significant contribution to attaining the objective of this section.

"RESEARCH; STUDIES; ANNUAL REPORT

"SEC. 605. (a) The Secretary may, directly or through grants or contracts, conduct research and studies which contribute to the purposes of this part and part N of title III of the Elementary and Secondary Education Act of 1965. Such research and studies may include but are not limited to—

"(1) studies and surveys to determine the need for increased or improved instruction in modern foreign languages and in other fields needed to provide a full understanding of the places in which such languages are commonly used;

"(2) research on more effective methods of providing instruction and evaluating competency in such foreign languages and other fields; and

"(3) the development of specialized materials for use in providing such instruction and evaluation or for use in training individuals to provide such instruction and evaluation.

"(b) The Secretary shall prepare and publish an annual report which shall include an index and analysis of the books and research materials produced with assistance under this title.

"EQUITABLE DISTRIBUTION OF FUNDS

"SEC. 606. (a) The Secretary shall make excellence the criterion for selection of grants awarded under section 602.

"(b) To the extent practicable and consistent with the criterion of excellence, the Secretary shall award grants under this part (other than section 602) in such manner as will achieve an equitable distribution of funds throughout the Nation.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 607. There are authorized to be appropriated $45,000,000 for fiscal year 1981, $55,000,000 for fiscal year 1982, $70,000,000 for fiscal year 1983, $80,000,000 for fiscal year 1984, and $85,000,000 for fiscal year 1985, to carry out the provisions of this part.

“PART B—BUSINESS AND INTERNATIONAL EDUCATION PROGRAMS

“FINDINGS AND PURPOSES

“SEC. 611. (a) The Congress finds that—

“(1) the future economic welfare of the United States will depend substantially on increasing international skills in the business community and creating an awareness among the American public of the internationalization of our economy;

“(2) concerted efforts are necessary to engage business schools, language and area study programs, public and private sector organizations, and United States business in a mutually productive relationship which benefits the Nation’s future economic interests;

“(3) few linkages presently exist between the manpower and information needs of United States business and the international education, language training and research capacities of institutions of higher education in the United States, and public and private organizations; and

“(4) organizations such as world trade councils, world trade clubs, chambers of commerce and State departments of commerce are not adequately used to link universities and business for joint venture exploration and program development.

“(b) It is the purpose of this part—

“(1) to enhance the broad objective of this Act by increasing and promoting the Nation’s capacity for international understanding and economic enterprise through the provision of suitable international education and training for business personnel in various stages of professional development; and

“(2) to promote institutional and noninstitutional educational and training activities that will contribute to the ability of United States business to prosper in an international economy.

“EDUCATION AND TRAINING PROGRAMS

“SEC. 612. (a) The Secretary shall make grants to, and enter into contracts with, institutions of higher education to pay the Federal share of the cost of programs designed to promote linkages between such institutions and the American business community engaged in international economic activity. Each program assisted under this part shall both enhance the international academic programs of institutions of higher education and provide appropriate services to the business community which will expand its capacity to engage in commerce abroad.

“(b) Eligible activities to be conducted by institutions of higher education under this section shall include, but are not limited to—

“(1) innovation and improvement in international education curricula to serve the needs of the business community, including development of new programs for nontraditional, mid-career, or part-time students;

“(2) development of programs to inform the public of increasing international economic interdependence and the role of American business within the international economic system;

"(3) internationalization of curricula at the junior and community college level, and at undergraduate and graduate schools of business;

"(4) development of area studies programs and interdisciplinary international programs;

"(5) establishment of export education programs through cooperative arrangements with regional and world trade centers and councils, and with bilateral and multilateral trade associations;

"(6) research for and development of specialized teaching materials, including language materials, and facilities appropriate to business-oriented students;

"(7) establishment of student and faculty fellowships and internships for training and education in international business activities;

"(8) development of opportunities for junior business and other professional school faculty to acquire or strengthen international skills and perspectives; and

"(9) development of research programs on issues of common interest to institutions of higher education and private sector organizations and associations engaged in or promoting international economic activity.

"(c) No grant may be made and no contract may be entered into under the provisions of this part unless an institution of higher education submits an application at such time and in such manner as the Secretary may reasonably require. Each such application shall be accompanied by a copy of the agreement entered into by the institution of higher education with a business enterprise, trade organization or association engaged in international economic activity, or a combination or consortium of such enterprises, organizations or associations, for the purpose of establishing, developing, improving or expanding activities eligible for assistance under subsection (b) of this section. Each such application shall contain assurances that the institution of higher education will use the assistance provided under this part to supplement and not to supplant activities conducted by institutions of higher education described in subsection (b).

"(d) The Federal share under this part for each fiscal year shall not exceed 50 per centum of the cost of such program.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 613. There are authorized to be appropriated $7,500,000 for fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1985, to carry out the provisions of this part.

"PART C—GENERAL PROVISIONS

"ADVISORY BOARD

"SEC. 621. (a) Not less than four times each year the Secretary shall convene meetings of an advisory board on the conduct of programs under this title. The board shall consist of—

"(1) one member selected by the Secretary of State;

"(2) one member selected by the Secretary of Defense;

"(3) one member selected by the Secretary of the Treasury;

"(4) one member selected by the Secretary of Commerce;

"(5) one member selected by the Secretary to serve as Chairman and coordinator of the activities of the board;

"(6) one member selected by the Chairman of the National Endowment for the Humanities;

"(7) one member selected by the Director of the International Development Cooperation Agency;

"(8) one member selected by the Director of the International Communication Agency;

"(9) one member selected by the President and Chairman of the Export-Import Bank of the United States;

"(10) one member selected by the Administrator, Small Business Administration;

"(11) five members selected by the Secretary from among representatives of the postsecondary educational community;

"(12) two members selected by the Secretary from among representatives of the elementary and secondary education community;

"(13) three members selected by the Secretary from among members of the public; and

"(14) three members selected by the Secretary from among representatives of the business community.

"(b)(1) The Advisory Board shall establish two subcommittees to carry out the functions described in paragraphs (2) and (3) of this subsection.

"(2) The first such subcommittee shall consider the grants made, or contracts entered into, under part A and part N of title III of the Elementary and Secondary Education Act of 1965. The board shall advise the Secretary on (A) any geographic areas of special need or concern to the United States, (B) the specific foreign languages to be designated under section 394(b)(3) of the Elementary and Secondary Education Act of 1965, (C) innovative approaches which may help to fulfill the purposes of this title, (D) activities which are duplicative of programs operated under other provisions of Federal law, (E) changes which should be made in the operation of programs under this part to ensure that the attention of scholars is attracted to problems of critical concern to United States international relations, and (F) the administrative and staffing requirements of international education programs in the Department.

"(3) The second such subcommittee shall review the programs under section 612 and shall advise the Secretary, who shall seek the advice of the Secretary of Commerce, on (A) changes which should be made to advance the purposes of part B and to assure the success of the programs authorized by part B, (B) special needs of such programs, and (C) any program elements which are duplicative of programs operated under other provisions of Federal law.

"DEFINITIONS

"SEC. 622. (a) As used in this title—

"(1) the term 'area studies' means a program of comprehensive study of the aspects of a society or societies, including study of its history, culture, economy, politics, international relations and languages;

"(2) the term 'international business' means profit-oriented business relationships conducted across national boundaries and includes activities such as the buying and selling of goods; investments in industries; the licensing of processes, patents and trademarks; and the supply of services;

"(3) the term 'export education' means educating, teaching and training to provide general knowledge and specific skills pertinent to the selling of goods and services to other countries, including knowledge of market conditions, financial arrangements, laws and procedures; and

"(4) the term 'internationalization of curricula' means the incorporation of international or comparative perspectives in existing courses of study or the addition of new components to the curricula to provide an international context for American business education.

"(b) All references to individuals or organizations, unless the context otherwise requires, mean individuals who are citizens or permanent residents of the United States or organizations which are organized or incorporated in the United States.".

(b) Title III of the Elementary and Secondary Education Act of 1965 is amended by adding at the end thereof the following new part:

"PART N—INTERNATIONAL UNDERSTANDING

"SHORT TITLE; DECLARATION OF FINDINGS; PURPOSE

"SEC. 393. (a) This part may be cited as the 'International Understanding Act'.

"(b) The Congress finds that—

"(1) the well-being of the United States and its citizens is affected by policies adopted and actions taken by, or with respect to, other nations and areas; and

"(2) the United States must afford its citizens adequate access to the information which will enable them to make informed judgments with respect to the international policies and actions of the United States.

"(c) It is the purpose of this part to support educational programs which will increase the availability of such information to students in the United States.

"PROGRAM AUTHORIZED

"SEC. 394. (a)(1) The Secretary is authorized, by grant or contract, to stimulate educational programs to increase the understanding of students and the public in the United States about the cultures, actions and interconnections of nations and peoples in order better to evaluate the international and domestic impact of major national policies.

"(2) Grants or contracts under this section may be made to any public or private agency or organization, including, but not limited to, institutions of higher education, State and local educational agencies, professional associations, education consortia, and organizations of teachers.

"(b)(1) Financial assistance under this part may be used for assistance for inservice training of teachers and other education personnel, the development of materials to link language learning to international studies, the compilation of existing information and resources about other nations in forms useful to various types of educational programs, and the dissemination of information and resources to educators and educational officials upon their request, but such assistance may not be used for the acquisition of equipment or remodeling of facilities.

"(2) Financial assistance under this part may be made for projects and programs at all levels of education, and may include projects and programs carried on as part of community, adult, and continuing education programs.

"(3) Financial assistance under this part may be used by local educational agencies to introduce instruction in foreign languages designated by the Secretary as having critical importance for the Nation which have not been offered by the schools of the local educational agency in the three academic years preceding the year in which the grant is made.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 395. There are authorized to be appropriated $5,250,000 for fiscal year 1981, $6,750,000 for fiscal year 1982, $8,250,000 for fiscal year 1983, and $9,000,000 each for fiscal years 1984 and 1985 to carry out the provisions of this part.".

(c)(1) Title VI of the National Defense Education Act of 1958 is repealed.

(2) Title I of the International Education Act of 1966 is repealed.

TITLE VII—AMENDMENT TO TITLE VII OF THE HIGHER EDUCATION ACT OF 1965

AMENDMENT

SEC. 701. Title VII of the Act is amended to read as follows:

"TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

"GENERAL PURPOSES

"SEC. 701. The Secretary shall carry out programs of financial assistance to institutions of higher education and to higher education building agencies for the construction, reconstruction, or renovation of academic facilities and the acquisition of special equipment if the primary purpose of such assistance is—

"(1) to enable such institutions to economize on the use of energy resources, with a priority for the use of coal, solar, and renewable resources;

"(2) to enable such institutions to bring their academic facilities into conformity with the requirements of—

"(A) the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968,

"(B) section 504 of the Rehabilitation Act of 1973, or

"(C) environmental protection or health and safety programs mandated by Federal, State, or local law, if such requirements were not in effect at the time such facilities were constructed;

"(3) to enable such institutions to construct, reconstruct, or renovate the Nation's research facilities, including libraries, and to acquire special research equipment;

"(4) to enable institutions with unusual increases in enrollment (according to data and criteria established by the Secretary) to construct, reconstruct, or renovate their facilities; or

"(5) to enable such institutions to detect, remove, or otherwise contain asbestos hazards in academic or other facilities used by students, in accordance with regulations prescribed by the Secretary.

"APPROPRIATIONS AUTHORIZED

"SEC. 702. There are authorized to be appropriated $140,000,000 for the fiscal year 1981, $140,000,000 for the fiscal year 1982, $145,000,000 for the fiscal year 1983, $150,000,000 for the fiscal year 1984, and $155,000,000 for the fiscal year 1985 for part A. There are authorized to be appropriated $80,000,000 for the fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1985, for part B. There is authorized to be appropriated $110,000,000 for the fiscal year 1981 and for each succeeding fiscal year ending prior to October 1, 1985, for part C, and such sums as may be necessary for each such fiscal year for section 734.

"PART A—GRANTS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF UNDERGRADUATE ACADEMIC FACILITIES

"STATE PLAN

"SEC. 711. (a) Any State desiring to participate in the grant program authorized by this part shall have an agreement pursuant to section 1203 and submit annually to the Secretary, through the State agency designated in such agreement, a State plan which shall—

"(1) provide that the plan shall be administered by the State entity having an agreement under section 1203;

"(2) set forth objective standards and methods which are consistent with basic criteria established under section 712, for—

"(A) determining the relative priorities of eligible projects submitted by institutions of higher education within the State, and

"(B) certifying the Federal share of the cost of each project;

"(3) provide for every applicant an opportunity for a hearing before the State agency regarding the priority assigned to such project, or any other decision by the State agency adversely affecting such applicant; and

"(4) provide for accounting procedures necessary to assure proper disbursement of Federal funds.

"(b) The Secretary shall not disapprove any State plan, or modification thereof, without first affording the State agency reasonable notice and opportunity for a hearing.

"(c) Whenever the Secretary finds that the State plan substantially fails to comply with this section, the Secretary shall notify the State that it is ineligible to participate in the program under this part until a determination is made that there is no longer a failure to comply.

"BASIC CRITERIA

"SEC. 712. (a) The Secretary shall, by regulation, prescribe basic criteria for the consideration of State plans which ensure—

"(1) flexibility for States to accommodate the varied needs of institutions in the States;

"(2) consideration of the degree to which applicant institutions are effectively using existing facilities; and

"(3) that the Federal share shall not exceed 50 percent of the development costs of a project.

"(b) Section 553 of title 5, United States Code, shall apply to the prescription of regulations under this section.

"ALLOTMENT OF FUNDS

"SEC. 713. (a) From the sums appropriated pursuant to section 702 to carry out the purposes of this part, not less than 24 per centum shall be allotted to States under subsection (b) for public community colleges and public technical institutes. The remainder of such sums shall be allotted States under subsection (c) for all other institutions of higher education.

"(b)(1) For the purpose of making grants to public community colleges and public technical institutes, the Secretary shall allot to each State an amount which bears the same ratio to the amount available for allotment under this subsection as the product of—

"(A) the number of persons in the State who have graduated from high school or received an equivalent certificate during the previous school year, and

"(B) the State's allotment ratio,

bears to the sum of the corresponding products for all the States.

"(2)(A) Except as provided in subparagraph (B), the allotment ratio shall be 1.00 less the product of—

"(i) 0.50, and

"(ii) the quotient obtained by dividing the income per person for the State by the income per person for all States (not including Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam).

"(B) Notwithstanding subparagraph (A)—

"(i) the allotment ratio shall in no case be less than 0.33⅓ or more than 0.66⅔;

"(ii) the allotment ratio for Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam shall be 0.66⅔; and

"(iii) the allotment ratio of any State shall be 0.50 for any fiscal year if the Secretary finds that the cost of school construction in such State exceeds twice the median of such costs

in all the States as determined by him on the basis of statistics and data as the Secretary shall deem adequate and appropriate.

"(C) Allotment ratios shall be promulgated annually by the Secretary on the basis of the average personal income in the State and in all the States for the three most recent consecutive calendar years for which data are available from the Department of Commerce.

"(c) For the purpose of making grants to all other institutions of higher education, the Secretary shall allot to each State—

"(1) an amount which bears the same ratio to 50 per centum of the amount available for allotment under this subsection as the number of students enrolled in institutions of higher education in such State bears to the number of students so enrolled in all States; and

"(2) an amount which bears the same ratio to 50 per centum of the amount available for allotment under this subsection as the number of students enrolled in grades nine through twelve of schools in such State bears to the total number of students so enrolled in all the States.

"(d) The aggregate amount allotted to any State under subsections (b) and (c) for any fiscal year shall not be less than $100,000. If the sums appropriated pursuant to section 702 are not sufficient to make payments to each State, then the amount of each State's allotment shall be ratably reduced.

"(e) Any portion of a State's allotment under subsections (b) and (c) for any fiscal year for which applications from qualified institutions have not been received by the State agency prior to January 1 of such fiscal year shall, by request, be available for payment of the Federal share of cost of other approved projects.

"(f) Amounts allotted under this section for any fiscal year which are not used by the close of the fiscal year, shall be reallotted by the Secretary among the States which are able to use these funds without delay during the next fiscal year.

"(g) Funds available under this part may be used for construction, reconstruction, or renovation of undergraduate facilities and combined graduate and undergraduate facilities.

"PART B—GRANTS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES

"GRANTS

"SEC. 721. (a)(1) Funds available for this part shall be used by the Secretary to make grants to graduate institutions of higher education whose applications for assistance are consistent with the objectives of this title.

"(2) The total payment for any fiscal year made to institutions of higher education in any State shall not exceed 12.5 per centum of sums appropriated for this part.

"(b) In making grants under this section, the Secretary shall seek the advice and recommendations of a panel of specialists who are not regular full-time employees of the Federal Government and are competent to evaluate such applications.

"(c) The amount of the grant shall not exceed 50 per centum of the development cost of the project.

"Part C—Loans for Construction, Reconstruction, and Renovation of Academic Facilities

"ELIGIBILITY CONDITIONS, AMOUNTS, AND TERMS

"Sec. 731. (a) From the sums available for this part, the Secretary shall make and insure loans to institutions of higher education and to higher education building agencies for programs consistent with the purposes of this title. No loan shall be made unless the Secretary finds that—

"(1) not less than 20 per centum of the development cost of the project will be financed from non-Federal sources;

"(2) the applicant is unable to secure the loan from other sources upon terms and conditions equally as favorable as those applicable to loans under this part;

"(3) the project will be undertaken in an economical manner; and

"(4) for any project with regard to an infirmary or other outpatient care facility for students and institutional personnel, assistance will not be provided under title IV of the Housing Act of 1950.

"(b) Loans shall be repaid within fifty years and shall bear interest at (1) a rate annually determined by the Secretary which shall be not less than one-quarter of 1 percentage point above the average annual interest rate on all interest-bearing obligations of the United States forming a part of the public debt as computed at the end of the preceding fiscal year, adjusted to the nearest one-eighth of 1 per centum, or (2) the rate of 4 per centum per annum, whichever is less.

"GENERAL PROVISIONS FOR LOAN PROGRAM

"Sec. 732. (a) Financial transactions of the Secretary, except with respect to administrative expenses, shall be final and conclusive on all officers of the Government and shall not be reviewable by any court.

"(b) In the performance of, and with respect to, the functions vested in him by this part, the Secretary may—

"(1) prescribe such rules and regulations as may be necessary to carry out the purposes of this part;

"(2) sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and any action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of the Secretary or any vacancy in such office; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under his control, and nothing herein shall be construed to except litigation arising out of activities under this part from the application of sections 507(b) and 517 and 2679 of title 28, United States Code;

"(3) foreclose on any property and bid for and purchase at any foreclosure, or any other sale, any property in connection with which he has made a loan pursuant to this part; in the event of

such an acquisition, notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary may complete, administer, remodel and convert, dispose of, lease and otherwise deal with, such property; except that (A) such action shall not preclude any other action by him to recover any deficiency in the amounts loaned and (B) any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

"(4) sell, exchange, or lease real or personal property and securities or obligations;

"(5) modify, with respect to the rate of interest, the time of payment of principal, interest, security, or any other term of any contract or agreement to which he is a party, including (A) granting a moratorium on the repayment of principal or interest to a party temporarily unable to make such repayment without undue financial hardship provided the applicant files, and the Secretary approves, a plan to make repayment, and (B) for any party for which a loan has been authorized prior to January 1, 1976, granting the option to pay into the fund pursuant to section 733, 75 per centum of the party's total obligation if the party desiring to exercise such option makes payment from non-Federal sources prior to October 1, 1985; and

"(6) include in any contract such other covenants, conditions, or provisions necessary to ensure that the purposes of this title will be achieved.

"REVOLVING LOAN AND INSURANCE FUND

"SEC. 733. (a) There is created within the Treasury a revolving loan fund for the purpose of making and insuring loans under this part (hereafter called the 'fund') which shall be available to the Secretary without fiscal year limitation. The total of any loans made from the fund in any fiscal year shall not exceed limitations specified in appropriations Acts.

"(b)(1) The Secretary shall transfer to the fund appropriations provided under section 702 to provide capital for making loans. Interest and principal payments on loans, and any other moneys, property, or assets derived from activities under this part shall be deposited in the fund.

"(2) All loans, expenses, and payments pursuant to operation of this part shall be paid from the fund, including expenses and payments in connection with sale, pursuant to section 302(c) of the Federal National Mortgage Association Charter Act, of participations in obligations acquired under this part. At the close of each fiscal year, the Secretary shall pay interest on the cumulative amount of funds paid out for loans under this part less the average undisbursed cash balance in the fund during the year. The interest rate shall be determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of maturity comparable to the average maturity of loans made from the fund during the month preceding each fiscal year. Interest payments may be deferred with the approval of the Secre-

tary of the Treasury, but interest payments so deferred shall themselves bear interest. If the Secretary determines that moneys in the fund exceed the present and prospective needs of the fund, the excess may be transferred to the general fund of the Treasury.

"ANNUAL INTEREST GRANTS

"SEC. 734. (a) To assist institutions of higher education and higher education building agencies in reducing the cost of borrowing from other sources for projects under this part, the Secretary may make annual interest grants to such institutions and agencies with respect to any project made over a fixed period not exceeding forty years, and provision for the grants shall be embodied in the contract guaranteeing their payment. Grants shall not be greater than the difference between (1) the average annual debt service which would be required to be paid during the life of the loan on the amount borrowed from other sources for the construction of such facilities, and (2) the average annual debt service which the institution or agency would have been required to pay during the life of the loan if the applicable interest rate had been determined by the Secretary in accordance with section 731(b).

"(b) The total amount of annual interest grants which may be paid to institutions of higher education and higher education building agencies in any year pursuant to contracts entered into for such year under this section shall not exceed $13,500,000.

"(c) The total payment for any fiscal year made to institutions of higher education and higher education building agencies in any State shall not exceed 12.5 per centum of sums appropriated for this section.

"(d) No annual interest grant shall be made unless (1) assurance is provided that not less than 10 per centum of the costs of the project will be financed from non-Federal sources, (2) the applicant is unable to secure a loan from other sources upon terms and conditions as favorable as those applicable to loans under this title, and (3) the project will be undertaken in an economical manner. Loans for which an interest grant is made shall, for purposes of this section only, not be considered financing from a non-Federal source.

"ACADEMIC FACILITIES LOAN INSURANCE

"SEC. 735. (a)(1) In order to assist institutions of higher education and higher education building agencies to procure loans for programs consistent with the purposes of this title, the Secretary may insure the payment of interest and principal on such loans if such institutions and agencies meet criteria prescribed under section 734 for the making of annual interest grants.

"(2) No loan insurance may apply to any loan principal which exceeds 90 per centum of the development cost of the academic facility.

"(b)(1) The United States shall be entitled to recover from any institution or agency to which loan insurance has been issued under this section the amount of any payment made pursuant to that insurance, unless the Secretary waives its right of recovery. Upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payment with respect to which the payment was made.

"(2) Any insurance issued under subsection (a) shall be incontestable in the hands of the institution or agency on whose behalf insurance is issued, and as to any lenders which make or contract to make a loan to such institution or agency in reliance thereon, except for fraud or misrepresentation on the part of such institution or agency or on the part of the lender who makes or contracts to make such loan.

"(c) Insurance may be issued by the Secretary under subsection (a) only if he determines that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed a per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, considering interest rates prevailing in the private market for similar loans and the risks assumed by the United States. The Secretary may charge a premium for such insurance in an amount determined by him to be necessary to cover administrative expenses and probable losses under subsections (a) and (b). Such insurance shall be subject to such further terms and conditions as the Secretary determines to be necessary.

"PART D—GENERAL

"RECOVERY OF PAYMENTS

"SEC. 741. (a) The Congress declares that, if a facility constructed with the aid of a grant under part A or B of this title is used as an academic facility for twenty years following completion of such construction, the public benefit accruing to the United States will equal in value the amount of the grant. The period of twenty years after completion of such construction shall therefore be deemed to be the period of Federal interest in such facility for the purposes of this title.

"(b) If, within twenty years after completion of construction of an academic facility which has been constructed, in part with a grant under part A or B of this title—

"(1) the applicant (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or

"(2) the facility ceases to be used as an academic facility, or the facility is used as a facility excluded from the term 'academic facility', unless the Secretary determines that there is good cause for releasing the institution from its obligation,

the United States shall be entitled to recover from such applicant (or successor) an amount which bears to the value of the facility at that time (or so much thereof as constituted an approved project or projects) the same ratio as the amount of Federal grant bore to the cost of the facility financed with the aid of such grant. The value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

"(c) Notwithstanding the provisions of subsections (a) and (b), no project assisted with funds under this title shall ever be used for re-

ligious worship or a sectarian activity or for a school or department of divinity.

"*DEFINITIONS*

"*SEC. 742. The following definitions apply to terms used in this title:*

"(1)(A) Except as provided in subparagraph (B) of this paragraph, the term 'academic facilities' means structures suitable for use as classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students, or for research, or for administration of the educational or research programs, of an institution of higher education, and maintenance, storage, or utility facilities essential to operation of the foregoing facilities. For purposes of part A or C, such term includes infirmaries or other facilities designed to provide primarily for outpatient care of student and instructional personnel. Plans for such facilities shall be in compliance with such standards as the Secretary may prescribe or approve in order to insure that projects assisted with the use of Federal funds under this title shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons.

"(B) The term 'academic facilities' shall not include (i) any facility intended primarily for events for which admission is to be charged to the general public, or (ii) any gymnasium or other facility specially designed for athletic or recreational activities, other than for an academic course in physical education or where the Secretary finds that the physical integration of such facilities with other academic facilities included under this title is required to carry out the objectives of this title, or (iii) any facility used or to be used for sectarian instruction or as a place for religious worship, or (iv) any facility which (although not a facility described in the preceding clause) is used or to be used primarily in connection with any part of the program of a school or department of divinity, or (v) any facility used or to be used by a school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of optometry, school of podiatry, or school of public health as these terms are defined in section 724 of the Public Health Service Act, or a school of nursing as defined in section 843 of that Act, except that the term 'academic facilities' may include any facility described in clause (v) to the degree that such facility is owned, operated, and maintained by the institution of higher education requesting the approval of a project; and that funds available for such facility under such project shall be used solely for the purpose of conversion or modernization of energy utilization techniques to economize on the use of energy resources; and that such project is not limited to facilities described in clause (v) of this subsection.

"(2)(A) The term 'construction' means (i) erection of new or expansion of existing structures, and the acquisition and installation of initial equipment therefor; or (ii) acquisition of existing structures not owned by the institution involved; or (iii) a combination of either of the foregoing. For the purposes of the pre-

ceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, except books, curricular, and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed in connection with construction; and the terms 'equipment', 'initial equipment', and 'built-in equipment', shall be more particularly defined by the Secretary by regulation.

"(B) The term 'reconstruction or renovation' means rehabilitation, alteration, conversion, or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of such equipment) of existing structures. For the purposes of the preceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, except books, curricular, and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed either in connection with construction as defined in paragraph (2)(A), or as part of the rehabilitation, alteration, conversion, or improvement of an existing structure, which structure would otherwise not be adequate for use as an academic facility; the terms 'equipment', 'initial equipment', and 'built-in equipment' shall be more particularly defined by the Secretary by regulation; and the term 'rehabilitation, alteration, conversion, or improvement' includes such action as may be necessary to provide for the architectural needs of, or to remove architectural barriers to, handicapped persons with a view toward increasing the accessibility to, and use of, academic facilities by such persons.

"(3)(A) The term 'development cost', with respect to an academic facility, means the amount found by the Secretary to be the cost, to the applicant for a grant or loan under this title, of the construction, reconstruction, or renovation involved and the cost of necessary acquisition of the land on which the facility is located and of necessary site improvements to permit its use for such facility. There shall be excluded from the development cost—

"(i) in determining the amount of any grant under part A or B, an amount equal to the sum of (I) any Federal grant which the institution has obtained or is assured of obtaining, under any law other than this title, with respect to the construction, reconstruction, or renovation that is to be financed with the aid of a grant under part A or B, and (II) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant; and

"(ii) in determining the amount of any loan under part C, an amount equal to the amount of any Federal financial assistance which the institution has obtained, or is assured of obtaining, under any law other than this title, with re-

spect to the construction, reconstruction, or renovation that is to be financed with the aid of a loan under part C.

"(B) In determining the development cost with respect to an academic facility, the Secretary may include expenditures for works of art for the facility of not to exceed 1 per centum of the total cost (including such expenditures) to the applicant of construction, reconstruction, or renovation of, and land acquisition and site improvements for, such facility.

"(4) The term 'Federal share' means in the case of any project a percentage (as determined under the applicable State plan) not in excess of 50 per centum of its development cost.

"(5) The term 'higher education building agency' means (A) an agency, public authority, or other instrumentality of a State authorized to provide, or finance the construction, reconstruction, or renovation of, academic facilities for institutions of higher education (whether or not also authorized to provide or finance other facilities for such or other educational institutions, or for their students or faculty), or (B) any corporation (no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual (i) established by an institution of higher education for the sole purpose of providing academic facilities for the use of such institution, and (ii) upon dissolution of which, all title to any property purchased or built from the proceeds of any loan made under part C will pass to such institution), or (C) an institution of postsecondary education.

"(6) The term 'public community college and public technical institute' means an institution of higher education which is under public supervision and control, and is organized and administered principally to provide a two-year program which is acceptable for full credit toward a bachelor's degree, or a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge; and the term includes a branch of an institution of higher education offering four or more years of higher education which is located in a community different from that in which its parent institution is located.

"(7) The term 'public educational institution' does not include a school or institution of any agency of the United States.

"(8) The term 'State' includes in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.".

TITLE VIII—COOPERATIVE EDUCATION

EXTENSION OF PROGRAM

SEC. 801. (a) Section 801(a) of the Act is amended—

(1) by striking out "fiscal year 1979" in paragraph (4) and inserting in lieu thereof "fiscal years 1979 and 1980";

(2) by striking out "for each of the fiscal years 1980, 1981, and 1982, $25,000,000" in paragraph (5) and inserting in lieu thereof "for each of the fiscal years 1981, 1982, 1983, 1984, and 1985, $30,000,000"; and

(3) by striking out "alternating periods" and inserting in lieu thereof "alternating or parallel periods".

(b) Section 801(b) of the Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out "fiscal years 1978, 1979, 1980, 1981, and 1982," in paragraph (4) and inserting in lieu thereof "fiscal years 1978, 1979, and 1980; and";

(3) by inserting immediately after paragraph (4) the following new paragraph:

"(5) $5,000,000 for each of the fiscal years 1981, 1982, 1983, 1984, and 1985,".

(c) Section 802(a) of the Act is amended—

(1) by striking out "$175,000" and inserting in lieu thereof "$325,000"; and

(2) by striking out "$125,000" and inserting in lieu thereof "$250,000".

(d) Section 802(c) of the Act is amended by inserting "individual unit of" immediately before "institution of higher education".

TITLE IX—GRADUATE PROGRAMS

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

SEC. 901. (a) Section 901 of the Act is amended—

(1) in subsection (a)(1), by striking out "to strengthen, improve and where necessary expand" and inserting in lieu thereof "to maintain, strengthen, and improve"; and

(2) in subsection (c), by striking out "1980" and inserting in lieu thereof "1985".

(b) Section 903(b)(2) of the Act is amended by striking out "expansion" and inserting in lieu thereof "maintenance and improvement of quality".

GRADUATE FELLOWSHIPS

SEC. 902. (a) Part B of title IX of such Act is amended to read as follows:

"PART B—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY

"STATEMENT OF PURPOSE

"SEC. 921. It is the purpose of this part to provide, through institutions of higher education, a program of grants to assist in making available the benefits of post-baccalaureate education to graduate and professional students who demonstrate financial need.

"PROGRAM AUTHORIZED

"SEC. 922. (a) The Secretary shall make grants to institutions of higher education to enable such institutions to make grants in accordance with the provisions of this part.

"(b)(1) In making such grants the Secretary shall, to the maximum extent feasible, ensure an equitable geographic distribution of awards and an equitable distribution among eligible public and independent institutions of higher education.

"(2) The Secretary shall not make a grant to a single institution of higher education of less than $75,000 from the sums appropriated under this part for any fiscal year.

"(3) Whenever the Secretary determines that an institution of higher education is unable to use all of the amounts available to it under this part, the Secretary shall, on such dates during each fiscal year as the Secretary may fix, reallot such amounts not needed to institutions which can use the grants authorized by this part.

"(c) Any eligible institution of higher education offering a program of post-baccalaureate study leading to a graduate or professional degree may apply for grants under this part. Each such institution may make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(d) In making grants to institutions of higher education, the Secretary shall—

"(1) take into account present and projected needs for highly trained individuals in all areas of education beyond high school;

"(2) take into account present and projected needs for highly trained individuals in other than academic career fields of high national priority; and

"(3) consider the need to prepare a larger number of individuals from minority groups, especially from among such groups which have been traditionally underrepresented in colleges and universities, but nothing contained in this paragraph shall be interpreted to require any educational institution to grant preference or disparate treatment to the members of one minority group on account of an imbalance which may exist with respect to the total number or percentage of individuals of such group participating in or receiving the benefits of the program authorized in this section, in comparison with the total number or percentage of individuals of such group in any community, State, section, or other area.

"(e) The Secretary shall assure that, in making grants under this part, awards are made to—

"(1) individuals who plan to pursue a career in public service;

"(2) individuals who plan to pursue advanced study in domestic mining and mineral and mineral fuel conservation, including oil, gas, coal, oil shale, and uranium; and

"(3) individuals from traditionally underrepresented groups, as determined by the Secretary, undertaking graduate or professional study.

The Secretary shall assure that the amount expended for categories of fellowships described in paragraphs (1), (2), and (3) of this subsection for each fiscal year is not less than the amount expended for each category in fiscal year 1979.

"(f) From sums required to be expended by the Secretary for grants under subsection (e), the Secretary may (in addition to the awards made to individuals) pay to the institution of higher education at

which such person is pursuing his course of study such amounts as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the institution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"(g) No fellowship shall be awarded under this part for study at a school or department of divinity.

"AWARD OF FELLOWSHIPS

"SEC. 923. (a) An institution of higher education receiving funds under this part shall make available to financially needy graduate and professional students an award determined by such institution of higher education, except that no award under this part may exceed $4,500, or the demonstrated level of financial need according to measurements of need approved by the Secretary, whichever is lower.

"(b) No student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded and is not engaging in gainful employment other than part-time employment by the institution of higher education involved in teaching, research, or similar activities, approved by the Secretary. Such period shall not exceed a total of 3 years, except that the Secretary may provide by regulation for the granting of such fellowships for a period of study not to exceed one twelve-month period, in addition to the 3 year period set forth in this section, under special circumstances which the Secretary determines would most effectively serve the purposes of this part. The Secretary shall make a determination to provide such twelve-month extension of an award to an individual fellowship recipient upon review of an application for such extension by the recipient.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 924. There are authorized to be appropriated to carry out the provisions of this part $60,000,000 for each of the fiscal years 1981 and 1982 and such sums as may be necessary for the fiscal year 1983 and each of the succeeding fiscal years ending before October 1, 1985.".

(b) Parts C, D, E, and F of such title IX are repealed.

NEW PROGRAM AUTHORIZED

SEC. 903. Title IX of the Act is amended by inserting after part B (as amended by this Act) the following new part:

"PART C—NATIONAL GRADUATE FELLOWS PROGRAM

"AWARD OF NATIONAL GRADUATE FELLOWSHIPS

"SEC. 931. (a) During the fiscal year ending September 30, 1981, and each of the succeeding fiscal years ending prior to October 1,

1985, the Secretary is authorized to award not more than 450 fellowships in accordance with the provisions of this part for graduate study in the arts, humanities, and social sciences by students of superior ability selected on the basis of demonstrated achievement and exceptional promise. Such fellowships shall be awarded for such periods as the Secretary may determine, but not in excess of forty-eight months.

"(b) The Secretary may allow a fellowship recipient to interrupt periods of study for a period not to exceed twelve months for the purpose of work, travel, or independent study away from the campus, if such independent study is supportive of the fellowship recipient's academic program, except that for such period the Secretary shall make no payments to the fellowship recipients or payments to institutions pursuant to the fellowship award of the recipient.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this part.

"ALLOCATION OF FELLOWSHIPS

"SEC. 932. (a)(1) The President shall appoint a National Graduate Fellows Program Fellowship Board consisting of not less than nine and not more than fifteen individuals representative of both public and private institutions of higher education especially qualified to serve on the Board. In making appointments, the President shall give due consideration to the appointment of individuals who are highly respected in the academic community.

"(2) The Board shall—

"(A) establish general policies for the program established by this part and oversee its operation;

"(B) select each year the fields in which fellowships under this part are to be awarded;

"(C) determine the number of fellowships each year to be awarded under this part in each designated field;

"(D) appoint distinguished panels in each field for the purpose of selecting fellows; and

"(E) prepare and submit to the Congress, at least once in every three year period, a report on any modifications in the program that the Board determines to be appropriate.

"(3) In carrying out its responsibilities, the Board shall consult on a regular basis with representatives of the National Science Foundation, the National Endowment for the Humanities, the National Endowment for the Arts, and representatives of institutions of higher education and associations of such institutions, learned societies, and professional organizations.

"(4) The term of office of each member of the Board shall be six years; except that (A) the members first taking office shall serve as designated by the President, one-third of the members for terms of two years, one-third of the members for terms of four years, and one-third of the members for terms of six years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed. No member may serve for a period in excess of eight years.

"(5) The President shall call the first meeting of the Board, at which the first order of business shall be the election of a Chairman

and a Vice Chairman, who shall serve until one year after the date of their appointment. Thereafter each officer shall be elected for a term of two years. In case a vacancy occurs in either office, the Board shall elect an individual from among the members of the Board to fill such vacancy.

"(6)(A) A majority of the members of the Board shall constitute a quorum.

"(B) The Board shall meet at least four times a year.

"(7) Members of the Board, while serving on the business of the Board, shall be entitled to receive compensation at rates fixed by the President, but not exceeding the rate prescribed for GS-18 of the General Schedule under section 5332, title 5, United States Code, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

"(b) The recipients of fellowships shall be selected in each designated field from among all applicants nationwide in each field by distinguished panels appointed by the Fellowship Board to make such selections under criteria established by the Board. The number of recipients in each field in each year shall not exceed the number of fellows allocated to that field for that year by the Fellowship Board.

"(c) Each recipient shall be entitled to use the fellowship in a doctoral program at any accredited institution of higher education in which the recipient may decide to enroll.

"STIPENDS

"SEC. 933. (a) The Secretary shall pay to individuals awarded fellowships under this part such stipends (including such allowances for subsistence and other expenses for such individuals and their dependents) as the Secretary may determine to be appropriate, adjusting such stipends as necessary so as not to exceed the fellow's demonstrated level of need according to measurements of need approved by the Secretary.

"(b) The Secretary shall (in addition to the stipends paid to individuals under subsection (a)) pay to the institution of higher education at which such person is pursuing his course of study such amount as the Secretary may determine to be appropriate, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the institution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"FELLOWSHIP CONDITIONS

"SEC. 934. (a) An individual awarded a fellowship under the provisions of this part shall continue to receive payments provided in section 933 only during such periods as the Secretary finds that he is maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, in an institution of higher education, and is not en-

gaging in gainful employment other than part-time employment by such institution in teaching, research, or similar activities, approved by the Secretary.

"(b) The Secretary is authorized to require reports containing such information in such form and to file at such times as the Secretary determines necessary from any person awarded a fellowship under the provisions of this part. The reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Secretary, stating that such individual is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.".

TRAINING AND LEGAL ASSISTANCE PROFESSION PROGRAM AUTHORIZED

SEC. 904. Title IX of the Act is amended by adding after part C (as added by section 904 of this Act) the following new part:

"PART D—ASSISTANCE FOR TRAINING IN THE LEGAL PROFESSION

"PROGRAM AUTHORIZED

"SEC. 941. (a) The Secretary is authorized prior to October 1, 1985, to make grants to, or enter into contracts with, public and private agencies and organizations other than institutions of higher education for the purpose of assisting individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary, to undertake training for the legal profession.

"(b) Grants made, and contracts entered into, under subsection (a) may cover, in accordance with regulations of the Secretary, all or part of the cost of—

"(1) selecting individuals from disadvantaged backgrounds for training for the legal profession,

"(2) facilitating the entry of such individuals into institutions of higher education for the purpose of pursuing such training,

"(3) providing counseling or other services designed to assist such individuals to complete successfully such training,

"(4) providing, for not more than six months prior to the entry of such individuals upon their courses of training for the legal profession, preliminary training for such individuals designed to assist them to complete successfully such training for the legal profession,

"(5) paying such stipends (including allowances for travel and for dependents) as the Secretary may determine for such individuals for any such period of preliminary training or for any period of training for the legal profession during which such individuals maintain satisfactory academic proficiency, as determined by the Secretary, and

"(6) paying for administrative activities of the agencies and organizations which receive such grants, or with which such contracts are entered into, to the extent such activities are for the purpose of furthering activities described in clauses (1) through (5).

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 942. There are authorized to be appropriated to carry out the provisions of this part $5,000,000 for fiscal year 1981, $5,000,000 for fiscal year 1982, $7,500,000 for fiscal year 1983, $7,500,000 for fiscal year 1984, and $10,000,000 for fiscal year 1985.".

LAW SCHOOL PROGRAMS INCLUDED IN TITLE IX

SEC. 905. Title IX of the Act is amended by adding at the end thereof the following new part:

"PART E—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS

"PROGRAM AUTHORIZATION

"SEC. 951. (a) The Secretary is authorized to enter into grants or contracts with accredited law schools in the States for the purpose of paying not to exceed 90 per centum of the costs of establishing or expanding programs in such schools to provide clinical experience to students in the practice of law, which includes any form of law student work involving performance in the role of a lawyer exercising legal skills and roles such as those of an advocate, counselor, negotiator, investigator, and eihical practitioner, whether by way of the provision of representation of or services to an identifiable client in actual cases or situations (subject to existing State or local limitations upon such provision) or by way of simulation of such provision through appropriate exercises. The cases and situations handled in actuality or by simulation may encompass any one or more of the following:

"(1) judicial, administrative, executive, or legislative proceedings, including the full range of preparation therefor;

"(2) office or house counsel problems; or

"(3) factual investigation, empirical research, or policy or legal analysis.

"(b) Such costs may include necessary expenditures incurred for—

"(1) planning;

"(2) training of faculty members and salary for additional faculty members;

"(3) travel and per diem for faculty and students;

"(4) reasonable stipends for students for work in the public service performed as part of any such program at a time other than during the regular academic year;

"(5) equipment and library resources;

"(6) involving practicing lawyers in the process of training law students to perform as lawyers; and

"(7) such other items as are allowed pursuant to regulations issued by the Secretary.

"(c) No law school may receive more than $100,000 in any fiscal year pursuant to this part, no part of which may be used to pay for indirect costs or charges.

"(d) For the purpose of this part the term 'accredited law school' means any law school which is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose, including any combination or consortium of such schools.

"APPLICATIONS

"SEC. 952. (a) A grant or contract authorized by this part may be made by the Secretary upon application which—

"(1) is made at such time or times and contains such information as he may prescribe;

"(2) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(3) provides for making such reports, in such form and containing such information as the Secretary may require to carry out his functions under this part, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

"(b) The Secretary shall allocate grants or contracts under this part in such manner as will provide an equitable distribution of such grants or contracts throughout the United States among law schools which show promise of being able to use funds effectively for the purposes of this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 953. There are authorized to be appropriated $5,000,000 for the fiscal year 1981, $8,000,000 for the fiscal year 1982, $8,000,000 for the fiscal year 1983, $9,000,000 for the fiscal year 1984, and $10,000,000 for the fiscal year 1985, to carry out the purposes of this part.".

TITLE X—ESTABLISHMENT OF A NEW TITLE X OF THE HIGHER EDUCATION ACT OF 1965

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

SEC. 1001. (a) Title X of the Act is amended by striking out everything preceding part C and inserting in lieu thereof the following:

"TITLE X—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

"PART A—ESTABLISHMENT AND OPERATION OF FUND

"AUTHORIZATION OF PROGRAM

"SEC. 1001. Subject to the provisions of section 1002, the Secretary is authorized to make grants to, and contracts with, institutions of postsecondary education (including combinations of such institutions) and other public and private educational institutions and agencies (except that no grant shall be made to an educational institution or agency other than a nonprofit institution or agency) to improve postsecondary educational opportunities by providing assistance to such educational institutions and agencies for—

"(1) encouraging the reform, innovation, and improvement of postsecondary education, and providing equal educational opportunity for all;

"(2) the creation of institutions and programs involving new paths to career and professional training, and new combinations of academic and experiential learning;

"(3) the establishment of institutions and programs based on the technology of communications;

"(4) the carrying out in postsecondary educational institutions of changes in internal structure and operations designed to clarify institutional priorities and purposes;

"(5) the design and introduction of cost-effective methods of instruction and operation;

"(6) the introduction of institutional reforms designed to expand individual opportunities for entering and reentering institutions and pursuing programs of study tailored to individual needs;

"(7) the introduction of reforms in graduate education, in the structure of academic professions, and in the recruitment and retention of faculties; and

"(8) the creation of new institutions and programs for examining and awarding credentials to individuals, and the introduction of reforms in current institutional practices related thereto.

"CONSULTATION

"SEC. 1002. No grant shall be made or contract entered into under section 1001 for a project or program with any institution of postsecondary education unless it has been submitted to the appropriate State entity having an agreement under section 1203, and an opportunity has been afforded such entity to submit its comments and recommendations to the Secretary.

"NATIONAL BOARD OF THE FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

"SEC. 1003. (a) There is established a National Board of the Fund for the Improvement of Postsecondary Education. The Board shall consist of fifteen members appointed by the Secretary for overlapping three-year terms. A majority of the Board shall constitute a quorum. Any member of the Board who has served for six consecutive years shall thereafter be ineligible for appointment to the Board during a two-year period following the expiration of such sixth year.

"(b) The Secretary shall designate one of the members as Chairman. A majority of the members of the Board shall be public interest representatives, including students, and a minority shall be educational representatives. All members selected shall be individuals able to contribute an important perspective on priorities for improvement in postsecondary education and strategies of educational and institutional change.

"(c) The Board shall—

"(1) advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education on priorities for the improvement of postsecondary education and make such recom-

mendations as it may deem appropriate for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice;

"(2) advise the Secretary and the Director of the Fund on the development of programs to be carried out by the Fund and on the selection of projects under consideration for support by the Fund in its competitions;

"(3) advise the Secretary and the Director of the Fund on the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund; and

"(4) meet at the call of the Chairman, except that it shall meet (A) at least four times during each fiscal year, or (B) whenever one-third of the members request in writing that a meeting be held.

"(d) The Director shall make available to the Board such information and assistance as may be necessary to enable the Board to carry out its functions.

"ADMINISTRATIVE PROVISIONS

"SEC. 1004. (a) The Secretary may appoint, for terms not to exceed three years, without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, not more than five technical employees to administer this title who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) The Director shall establish procedures for reviewing and evaluating grants and contracts made or entered into under this title. Procedures for reviewing grant applications or contracts for financial assistance under this section may not be subject to any review outside of officials responsible for the administration of the Fund for the Improvement of Postsecondary Education.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1005. There are authorized to be appropriated to carry out this title $20,000,000 for fiscal year 1981, $30,000,000 for fiscal year 1982, $40,000,000 for fiscal year 1983, $50,000,000 for fiscal year 1984, and $50,000,000 for fiscal year 1985.".

(b)(1) Part C of title X of the Act is redesignated as part B, and sections 1071 and 1072 thereof are redesignated as sections 1021 and 1022, respectively.

(2) Section 1021(a) of the Act (as so redesignated) is amended by striking out "this title,".

(c) Section 404 of the General Education Provisions Act is repealed.

TITLE XI—ESTABLISHMENT OF A NEW TITLE XI OF THE HIGHER EDUCATION ACT OF 1965

PROGRAM AUTHORIZED

SEC. 1101. Title XI of the Act is amended to read as follows:

"TITLE XI—URBAN GRANT UNIVERSITY PROGRAM

"FINDINGS AND PURPOSE

"SEC. 1101. (a) The Congress finds and declares—

"(1) that there exists within the Nation's urban universities an underutilized reservoir of skills, talents, and knowledge applicable toward the amelioration of the multitude of problems that face the Nation's urban centers;

"(2) that the skills, talents, and knowledge of urban universities must be applied in a systematic and sustained manner to make a significant contribution toward the solution of these problems;

"(3) that the application of the skills, talents, and knowledge of urban universities is hindered by the limited funds available to sustain their commitment; and

"(4) that it is the policy of the United States to encourage and facilitate the application of the skills, talents, and knowledge of urban universities toward serving the needs of urban centers of the Nation.

"(b) The Secretary shall carry out programs in accordance with the provisions of this title, for the purpose of aiding urban universities to help find answers to urban problems, and aiding such universities to make their resources more readily and effectively available to the urban communities in which they are located.

"APPROPRIATIONS AUTHORIZED

"SEC. 1102. (a) For the purpose of carrying out the provisions of this title there is authorized to be appropriated $15,000,000 for fiscal year 1981, $25,000,000 for fiscal year 1982, $40,000,000 for fiscal year 1983, $50,000,000 for fiscal year 1984, and $65,000,000 for fiscal year 1985.

"(b) In the event of a multiple-year grant to any urban university under this title, the Secretary shall make funds available for such grant from funds appropriated for this title for the fiscal year in which such funds are to be used by the recipient.

"PROJECT ASSISTANCE

"SEC. 1103. (a)(1) The Secretary shall make grants to urban universities to pay the Federal share of the cost of carrying out projects consistent with the purposes of this title.

"(2) The Secretary shall give priority to applications containing cooperative arrangements between urban universities within an urban area.

"(b) An application submitted under this section shall contain provisions designed to show that the chief executive of the local

agency or agencies of general government within whose jurisdiction fall the need or needs to be addressed by the project or projects described has been afforded a reasonable opportunity to review and comment upon the proposed project or projects. In making grants under this title, the Secretary shall consider the degree to which there is evidence in the application of (1) the participation of such local agency or agencies of general government and of the community in the development of the project or projects for which assistance is requested under this section; (2) local government and community participation in the implementation of the proposed project or projects; and (3) a commitment by such local agency or agencies of general government to pay the portion of the non-Federal share of the cost of such project or projects required by subsection (d) of this section. Not more than one-half of such non-Federal share may be in the form of services, supplies, or equipment.

"(c) The Secretary may request the advice of any Federal agency the Secretary considers appropriate before approving an application for project assistance under this section.

"(d) No grant under this section shall be 90 per centum of the cost of the project for which assistance is granted.

"(e) An institution of higher education which receives a grant under this section shall be designated by the Secretary as an 'urban grant university'. The Secretary shall annually publish a list of the institutions of higher education which have been so designated.

"LIMITATION

"SEC. 1104. (a) The total amount of payments in any fiscal year under section 1103 to institutions within any one State shall not exceed 15 per centum of the total amount paid.

"(b) In allocating assistance under section 1103 of this title, the Secretary shall endeavor to achieve broad and equitable geographical distribution throughout the Nation.

"DEFINITIONS

"SEC. 1105. As used in this title—

"(1) 'urban area' means a standard metropolitan statistical area having a population of not less than five hundred thousand persons; or, in any State which has no standard metropolitan statistical area within its borders which has such a population, the entity of the State having an agreement under section 1203 may, or if no such entity has an agreement, the Secretary shall designate one urban area for the purposes of this part;

"(2) 'urban university' means an institution of higher education which (A) is located in an urban area, (B) draws a substantial portion of its undergraduate students from the urban area in which it is located or contiguous urban areas, (C) carries out programs to make postsecondary education opportunities more accessible to residents of such urban area or contiguous areas, (D) has the present capacity to provide resources responsible to the needs and priorities of such urban area and contiguous areas, (E) offers a range of professional or graduate programs sufficient to sustain its capacity to provide such resources, and

(F) has demonstrated and sustained a sense of responsibility to such urban area and contiguous areas and its people;

"(3) for the purposes of paragraphs (2) and (4) of this section, 'institution of higher education' includes any combination of such institutions, any one of which meets all the qualifications of paragraph (2); and

"(4) 'resources' are programs of institutions of higher education including specialized training, research services, and technical assistance responsible to the needs and priorities of the urban area and contiguous areas.".

TITLE XII—GENERAL PROVISIONS

AMENDMENTS

SEC. 1201. Title XII of the Act is amended by striking out sections 1202, 1203, 1205, 1206, and 1208, by redesignating section 1207 as section 1202, and by adding after such section the following new sections:

"FEDERAL-STATE RELATIONSHIPS; STATE AGREEMENTS

"SEC. 1203. (a) Any State which desires to receive assistance under an applicable program, as described in subsection (f), shall enter into an agreement with the Secretary pursuant to subsection (b) setting forth the terms and conditions for the relationship between the Federal Government and that State for the purposes set forth in the applicable programs.

"(b) Such agreement shall consist of assurances by the State, including a description of the means to be used by the State to fulfill the assurances, that—

"(1) the State will provide for such methods of administration as are necessary for the proper and efficient administration of any program in keeping with the purposes of the applicable programs described in subsection (f);

"(2) the State will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State under any title of this Act;

"(3) the State will follow policies and practices of administration that will ensure that non-Federal funds will not be supplanted by Federal funds, and that equitable and appropriate criteria will be used in evaluation of applications or proposals for grants or contracts under any such applicable program; and

"(4) the State has a comprehensive planning or policy formulation process which—

"(A) considers the relation between State administration of any such applicable program, and administration of similar State programs or processes;

"(B) encourages State policies designed to consider effects on declining enrollments on all sectors of postsecondary education in the State;

"(C) considers the postsecondary education needs of unserved and underserved individuals within the State, including individuals beyond the traditional college age;

"(D) considers the resources of institutions, organizations, or agencies (both public and private) within the State capable of providing postsecondary educational opportunities in the State; and

"(E) provides for direct, equitable and active participation in the comprehensive planning or policy formulation process or processes of representatives of institutions of higher education (including community colleges, proprietary institutions, and independent colleges and universities), students, other providers of postsecondary education services, and the general public in the State.

Participation under subclause (E) shall, consistent with State law, be achieved through membership on State planning commissions, State advisory councils, or other State entities established by the State to conduct federally assisted comprehensive planning or policy formulation.

"(c) The information and assurances provided by a State in accordance with paragraphs (1), (2), and (3) of subsection (b), and regulations issued by the Secretary related directly to such assurances, shall be satisfactory for the purposes of, and shall be considered in lieu of, any comparable requirements for information and assurances in any applicable program described in subsection (f).

"(d)(1) An agreement of a State shall remain in effect subject to modification as changes in information or circumstances require.

"(2) Whenever the Secretary, after reasonable notice and opportunity for a hearing has been given to the State, finds that there is a failure to comply substantially with the assurances required in paragraph (1), (2), or (3) of subsection (b), the Secretary shall notify the State that it is no longer eligible to participate in any applicable program described in subsection (f) until the Secretary is satisfied that there is no longer any such failure to comply.

"(e)(1) For the purpose of this section, the selection of the State entity or entities authorized to act on behalf of the State for the purpose of entering into an agreement with the Secretary shall be in accordance with the State law of each individual State with respect to the authority to make legal agreements between the State and the Federal Government.

"(2)(A) Nothing in this section shall be construed to authorize the Secretary to require any State to adopt, as a condition for entering into an agreement, or for participation in an applicable program as defined in subsection (f), a specific State organizational structure for achieving participation in the planning, or administration of programs, or for statewide planning, coordination, governing, regulating, or administering of postsecondary education agencies, institutions, or programs in the State.

"(B) Nothing in this section shall be construed as a limitation on the authority of any State to adopt a State organizational structure for postsecondary education agencies, institutions, or programs which is appropriate to the needs, traditions, and circumstances of that State, or as a limitation on the authority of a State entering into an agreement pursuant to this section to modify the State organizational structure at any time subsequent to entering into such an agreement.

"(f) For the purposes of this section an 'applicable program' is defined as—

"(1) title I;
"(2) subpart 3 of part A of title IV; and
"(3) part A of title VII.

"TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE

"SEC. 1204. (a) The Secretary is authorized to provide such modifications of any programs under this Act as the Secretary deems necessary in order to adapt such programs to the needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. Such program modifications may include the consolidation of grants for any single program on a regional or interterritorial basis. Such program modifications shall be established in cooperation with the governments of such territories and shall be governed by a memorandum of understanding between such governments and the Department of Education.

"(b) In conjunction with the development of program modifications under subsection (a), the Secretary shall, within eighteen months after the date of enactment of this section, conduct an analysis of the unique educational needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, and report to the Congress on the results of such analysis. Such report shall include recommendations of the Secretary with respect to the most appropriate form of Federal postsecondary education assistance for such territories, an evaluation of the effectiveness of the authority contained in subsection (a), and whether such authority should be extended or modified.

"(c) Pending legislative implementation of the recommendations submitted by the Secretary under subsection (b), there are authorized to be appropriated $2,000,000 for each fiscal year ending prior to October 1, 1985 to support the cost of providing postsecondary education programs on Guam for nonresident students from the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Such sums shall be allocated by the Secretary among the educational institutions on Guam providing such programs on the basis of the number of students enrolled from the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Sums authorized under this subsection shall remain available until appropriated and sums appropriated under this subsection shall remain available until expended.

"NATIONAL ADVISORY COMMITTEE ON ACCREDITATION AND INSTITUTIONAL ELIGIBILITY

"SEC. 1205. (a) There is established in the Department of Education a National Advisory Committee on Accreditation and Institutional Eligibility which shall be composed of 15 members appointed by the Secretary from among individuals knowledgeable concerning education, and including persons who are (1) representative of institutions, (2) representative of students and youth, (3) representative of professional associations, (4) representative of State educational agencies, and (5) representative of the general public. The Chairman of the Committee shall be appointed by the Secretary.

"(b) The term of office of each member of the Committee shall be three years, except that—

"(1) the members first appointed to the Committee shall serve as designated by the Secretary, five for a term of one year, five for a term of two years, and five for a term of three years, and

"(2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term.

"(c) The Committee shall, with respect to all matters pertaining to institutional eligibility—

"(1) advise the Secretary with regard to the responsibility to publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered, including advising the Secretary with respect to the criteria and procedures for carrying out such responsibility;

"(2) advise the Secretary with regard to the responsibility to designate State agencies as reliable authorities on the quality of public postsecondary vocational education or training;

"(3) develop and recommend to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish the eligibility of such institutions on an interim basis for participation in federally funded programs; and

"(4) carry out such other advisory functions relating to accreditation and institutional eligibility as may be assigned by the Secretary.

"(d) The Committee shall meet not less than twice each year at the call of the Chairman. The date of, and agenda for, each meeting of the Committee shall be submitted in advance to the Secretary for approval. A representative of the Secretary shall be present at all meetings of the Committee.

"(e) The Committee shall, not later than November 30 of each year, make an annual report through the Secretary to the Congress. The annual report shall contain a list of the members of the Committee and their addresses, a list of the Committee's functions, a list of dates and places of each meeting during the preceding fiscal year, and a summary of the activities, findings, and recommendations made by the Committee during the preceding fiscal year.

"(f) Subject to section 448(b) of the General Education Provisions Act, the Committee shall continue to exist until September 30, 1985.".

TITLE XIII—NEW HIGHER EDUCATION PROGRAM ESTABLISHED

WOMEN'S WORKSITE POSTSECONDARY EDUCATION PROGRAM

SEC. 1301. The Act is amended by adding at the end thereof the following new title:

"TITLE XIII—WOMEN'S WORKSITE DEVELOPMENT DEMONSTRATION PROGRAM

"PROGRAM AUTHORIZED

"SEC. 1301. (a) The Secretary shall make grants to, and enter into contracts with, eligible recipients to promote, plan, implement, and evaluate the delivery of postsecondary education to women at the place of their employment or in conjunction with their employment. In making grants and entering into contracts under this title, the Secretary shall assure that the program under this title will—

"(1) identify the most effective means to inform women at the place of their employment and through the aegis of their employment of the availability and relevance of postsecondary education;

"(2) test the most effective means for creating collaborative agreements among institutions of higher education, including community colleges, employers and labor organizations to deliver educational services;

"(3) develop formats for adapting educational content to career ladder progressions;

"(4) implement a program of postsecondary educational courses at or in conjunction with places of employment to promote occupational development; and

"(5) evaluate the effectiveness of the program in both its substantive and procedural aspects.

"(b) For the purpose of this title, an eligible recipient is—

"(1) any institution of higher education, including any community college;

"(2) any community-based organization which is organized as a nonprofit or not-for-profit organization and is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1954, if such community-based organization has entered into a contract with an institution of higher education, including a community college, for the purpose of this title;

"(3) any employer, if the employer has entered into a contract with an institution of higher education, including a community college, for the purpose of this title; and

"(4) any labor organization, if such organization has entered into a contract with an institution of higher education, including a community college, for the purpose of this title.

"APPLICATIONS

"SEC. 1302. (a) Applications for grants or contracts under this title shall be submitted in such form, at such time, and in such manner as the Secretary may prescribe. Any application by a community-based organization, an employer, or labor organization shall be accompanied by the contract required by section 1301(b) (2), (3), or (4), as the case may be.

"(b) Each such application shall contain provisions designed to assure that the eligible recipient will maintain efforts undertaken by the recipient prior to the financial assistance made available under the provisions of this title during the period during which such financial assistance is made available under this title.

"USES OF FUNDS

"SEC. 1303. (a) Financial assistance under this title shall be used for—

"(1) the establishment and operation of a panel composed of not less than twenty-one individuals representing employers, labor organizations, postsecondary education, secondary and vocational education, and public organizations concerned with employment, and organizations concerned with women's occupational and educational progress to undertake activities including but not limited to—

"(A) conducting not less than one community dialogue annually at which information will be shared widely so as to apprise women of the educational, occupational and employment opportunities in the communities with respect to which the eligible recipient conducts its activities; and

"(B) assessing annually women's work-related development needs, opportunities and resources in the community with respect to which the eligible recipient conducts its activities and report thereon to the Secretary, the Commission on National Development in Postsecondary Education established under part A of title I, and each respective State entity having an agreement under section 1203;

"(2) the designation of not less than one worksite employing significant numbers or proportions of women as an educational development worksite and, in collaboration with the management and labor unions of that worksite the design, implementation and evaluation of comprehensive postsecondary education delivery programs; and

"(3) reporting the evaluation of the activities conducted pursuant to paragraph (2) of this subsection to the Secretary, the Commission on National Development in Postsecondary Education, and each appropriate State entity having an agreement pursuant to section 1203.

"(b) Financial assistance under this title may be used to pay the reasonable costs of personnel, travel, supplies, and overhead generally. Financial assistance under this title may not be used to substitute personnel or activities previously supported by the eligible recipient.

"LIMITATIONS ON FINANCIAL ASSISTANCE

"SEC. 1304. (a) No financial assistance may be made under this title to an eligible recipient in an amount which exceeds $75,000 in any fiscal year.

"(b)(1) Each grant agreement or contract entered into under the provisions of this title may contain provisions to assure that financial assistance will be available for more than one fiscal year.

"(2) Funds appropriated under this title shall be available until expended.

"(c) No grant may be made to any community-based organization, employer, or labor organization if the contract required by section 1301(b) (2), (3), or (4), as the case may be, contains provisions which are in conflict with any collective bargaining agreement which is

applicable to the project for which assistance is sought under this title.

"DEFINITION

"SEC. 1305. As used in this title, the term 'community college' means any junior college, postsecondary vocational school, technical institute, or any other educational institution (which may include a four-year institution of higher education or a branch thereof) in any State which—

"(1) is legally authorized within such State to provide a program of education beyond secondary education;

"(2) admits as regular students persons who are high school graduates or the equivalent, or beyond the age of compulsory school attendance;

"(3) provides a postsecondary education program leading to an associate degree or acceptable for credit toward a bachelor's degree;

"(4) is a public or other nonprofit institution; and

"(5) is accredited as an institution by a nationally recognized accrediting agency or association, or if not so accredited—

"(A) is an institution which has obtained recognized preaccreditation status from a nationally recognized accrediting body, or

"(B) is an institution whose credits are acceptable on transfer, by not less than three accredited institutions, for credit on the same basis as if transferred from an institution so accredited.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1306. There are authorized to be appropriated $7,500,000 for the fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1985, for the purpose of carrying out this title.".

TITLE XIV—MISCELLANEOUS PROVISIONS

PART A—GENERAL EDUCATION PROVISIONS

CONTINGENT EXTENSION

SEC. 1401. (a) The first sentence of section 414 of the General Education Provisions Act is amended by striking out "for one additional fiscal year" and inserting in lieu thereof the following: "for—

"(i) two additional fiscal years for any applicable program authorized to be included in the Appropriation Act for the fiscal year preceding the fiscal year for which appropriations are available for obligation, or

"(ii) one additional fiscal year for any other applicable program".

(b) The second sentence of such section is amended by striking out "for such additional year" and inserting in lieu thereof "for each additional fiscal year".

ENFORCEMENT OF THE RULES

SEC. 1402. The second sentence of section 431(d)(1) of the Act is amended by inserting before the period a comma and the following: "in whole or in part".

SCIENCE EDUCATION PROGRAMS

SEC. 1403. The General Education Provisions Act is amended by inserting after section 406 the following new section:

"AUTHORIZATION OF APPROPRIATIONS FOR SCIENCE EDUCATION PROGRAMS

"SEC. 406A. There is authorized to be appropriated to the Secretary of Education for fiscal year 1981—

"(1) $2,500,000 for the purpose of carrying out the Pre-College Science Teacher Training program, and

"(2) $5,000,000 for the purpose of carrying out the Minority Institutions Science Improvement program

transferred to the Secretary from the National Science Foundation by section 304 of the Department of Education Organization Act.".

COMMISSION ON THE REVIEW OF THE FEDERAL IMPACT AID PROGRAM

SEC. 1404. (a) Section 1015(d) of the Education Amendments of 1978, relating to the impact aid study, is amended by striking out "December 1, 1980" and inserting in lieu thereof "September 1, 1981".

(b) All funds available to the Commission for its operating expenses shall, notwithstanding any other provision of law, be made available to such Commission, and remain available to such Commission to carry out the amendment made by subsection (a) of this section. The Secretary of Education shall, notwithstanding any other provision of law, make available to such Commission, from funds appropriated to the Department of Education, such funds as may be necessary to enable the Commission to maintain its level of operations, consistent with the amendment made by subsection (a) of this section, except that the total amount so available for any month shall not exceed 110 per centum of the average monthly amount available for expenditure by the Commission during the fiscal year 1980.

(c) The terms of office of the members of such Commission shall be coterminous with the duration of the Commission and the number of such members shall be equal to the number who are in office at any time, except that such number shall not exceed the number specified in such section 1015. A quorum of the Commission shall be equal to a majority of the members of the Commission who have qualified.

(d) The Commission shall terminate September 30, 1981.

EVALUATION REPORTS

SEC. 1405. Section 417(a)(1)(F) of the General Education Provisions Act is amended by inserting immediately before the period a comma and the following: "including tabulations of available data *to indicate the effectiveness of the programs and projects by the sex, race, and age of its beneficiaries".*

EDUCATION IMPACT STATEMENT

SEC. 1406. Part A of the General Education Provisions Act is amended by adding at the end thereof the following new section:

"EDUCATION IMPACT STATEMENT

"SEC. 409. Notwithstanding any other provision of law, no regulation affecting any institution of higher education in the United States, promulgated on or after the date of enactment of this Act, shall become effective unless such agency causes to be published in the Federal Register a copy of such proposed regulation together with an educational impact assessment statement which shall determine whether any information required to be transmitted under such regulation is already being gathered by or is available from any other agency or authority of the United States. Notwithstanding the exception provided under section 553(b) of title 5, United States Code, such statement shall be based upon the record established under the provisions of section 553 of title 5, United States Code, compiled during the rulemaking proceeding regarding such regulation.".

ADMINISTRATIVE SIMPLIFICATION STUDY AUTHORIZED

SEC. 1407. (a) The Secretary of Education is authorized and directed to make a comprehensive study of the programs authorized by—

(1) the Elementary and Secondary Education Act of 1965,

(2) the Vocational Education Act of 1963, and

(3) the Education of the Handicapped Act in order to analyze—

(A) if there are unnecessary duplications, conflicts, and reporting requirements contained in the laws authorizing such programs, while at the same time assuring that the delivery of educational services and the ability of the Federal Government to monitor and evaluate their effectiveness in serving separate target populations are maintained or enhanced;

(B) if there are unnecessary duplications, conflicts, and reporting requirements contained in the regulations promulgated to carry out such programs, while at the same time assuring that the delivery of educational services and the ability of the Federal Government to monitor and evaluate their effectiveness in serving separate target populations are maintained or enhanced; and

(C) the relationship between the Federal programs set forth in clauses (1), (2), and (3) and similar State programs.

(b) The Secretary shall prepare and submit to the Congress a report of the study required by this section within one year after the date of enactment of this Act.

PART B—NATIONAL INSTITUTE OF EDUCATION

EXTENSION OF AUTHORITY

SEC. 1411. Section 405(j) of the General Education Provisions Act is amended to read as follows:

"(j)(1) There are authorized to be appropriated to carry out the provisions of this section, $125,000,000 for fiscal year 1981, $145,000,000 for fiscal year 1982, $165,000,000 for fiscal year 1983, $190,000,000 for fiscal year 1984, and $215,000,000 for fiscal year 1985.

"(2) Sums so appropriated shall, notwithstanding any other provision of law unless enacted in express limitation of this subsection, remain available for the purposes of this subsection unless expended.".

DECLARATION OF POLICY

SEC. 1412. The first sentence of section 405(a)(1) of the General Education Provisions Act is amended by inserting after "sex" a comma and "age, handicap".

RESEARCH AND DEVELOPMENT PRIORITIES

SEC. 1413. Section 405(b)(2) of the General Education Provisions Act is amended by—

(1) striking out "and" at the end of clause (D);

(2) by redesignating clause (E) as clause (G);

(3) by adding after clause (D) the following new clauses:

"(E) overcoming the special problems of the nontraditional student, including the older student (with special consideration for students over age 45) and the part-time student, and the institution which the student attends;

"(F) encouraging the study of languages and cultures and addressing both national and international education concerns; and"; and

(4) by adding at the end the following sentence: "In carrying out this paragraph, the Institute shall give attention to the needs of early adolescents and the schools which serve them.".

REPEALER

SEC. 1414. (a) Section 405(f)(3) of the General Education Provisions Act is repealed.

(b) Paragraph (4) of section 405(f) of such Act is redesignated as paragraph (3).

PART C—AMENDMENTS TO THE REHABILITATION ACT OF 1973

COMPOSITION OF THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD AND TRANSMISSION OF REPORT

SEC. 1421. (a)(1) Section 502(a)(1)(B)(i) of the Rehabilitation Act of 1973 is amended to read as follows:

"(i) Department of Health and Human Services.".

(2) Section 502(a) of such Act is amended by adding the following clause immediately after clause (x):

"(xi) Department of Education.".

(b) Section 502(h) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) The Board shall, at the same time that the Board transmits the report required under section 7(b) of the Act entitled 'An Act to ensure that certain buildings financed with Federal funds are so designated and constructed as to be accessible to the physically handicapped', approved August 12, 1968 (commonly known as the Architectural Barriers Act of 1968) transmit that report to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.".

INFORMATION CLEARINGHOUSE FOR HANDICAPPED INDIVIDUALS

SEC. 1422. (a) The first sentence of section 15(a) of the Rehabilitation Act of 1973 is amended by striking out "may" and inserting in lieu thereof "shall".

(b) Section 15(c) of such Act is amended by striking out "Any" and inserting in lieu thereof "The".

PART D—NATIVE HAWAIIAN EDUCATION STUDY

STUDY AUTHORIZED

SEC. 1431. (a)(1) The Congress finds that—

(A) like other Native Americans, Native Hawaiians rank among the lowest in level of educational attainment and per capita income; and

(B) existing Federal, State, and local assistance in the field of education fails to address the basic and special needs of Native Hawaiians.

(2) The Congress declares its commitment to assist in providing the educational services and opportunities which Native Hawaiians need.

(b) There is established the Advisory Council on Native Hawaiian Education which shall consist of seven members appointed by the Secretary of Education, after consultation with the Governor of Hawaii, from among individuals who are professionals in the various fields relating to human development, and who are familiar with the educational problems of Native Hawaiians.

(c) The Council shall—

(1) advise the Secretary with respect to the operation of programs administered by the Department of Education and other programs making educational assistance available to Native Hawaiians;

(2) conduct a study which shall (A) evaluate the effectiveness of State and federally assisted educational programs in serving Native Hawaiian children and the extent to which such programs achieve their purposes with respect to such children, and (B) take into account the special health, social, and psychological needs of Native Hawaiian children; and

(3) submit a report to the Secretary and to the Congress not later than January 31, 1983, containing the findings and recom-

mendations of the Council with respect to the matters described in paragraphs (1) and (2).

(d) The Council shall terminate 60 days after the submission of its report under subsection (c).

(e) There are authorized to be appropriated a total amount of not more than $500,000 for the fiscal years 1981, 1982, and 1983 to carry out this section.

PART E—SPECIAL IMPACT AID PROGRAM

PROGRAM AUTHORIZED

SEC. 1441. The Act of September 30, 1950 (Public Law 874, 81st Cong.), relating to impact aid, is amended by adding after section 4 the following new section:

“SPECIAL PROGRAM

“SEC. 4A. (a)(1) Any local educational agency that experiences an enrollment increase in any school year of at least 20 students as a result of the entry into any school supported by such agency of eligible children shall be eligible to receive payment for such children enrolled in its schools in accordance with the provisions of this section.

“(2) For purposes of this section the term ‘eligible children’ means—

- *“(A) aliens who fled from Cambodia, Vietnam, or Laos and who, on or after January 1, 1979—*
  - *“(i) were admitted into the United States as refugees under section 207 of the Immigration and Nationality Act;*
  - *“(ii) are applicants for asylum or have been granted asylum in the United States; or*
  - *“(iii) were paroled into the United States as refugees under section 212(d)(5) of the Immigration and Nationality Act; or*
- *“(B) aliens who fled from Cuba or Haiti and who, on or after November 1, 1979—*
  - *“(i) were admitted into the United States as refugees under section 207 of the Immigration and Nationality Act;*
  - *“(ii) are applicants for asylum or have been granted asylum in the United States;*
  - *“(iii) are paroled into the United States as refugees under section 212(d)(5) of the Immigration and Nationality Act; or*
  - *“(iv) are Cuban-Haitian entrants (status pending) who entered the United States on or after such date.*

“(3)(A) Each such local educational agency is authorized to receive for the fiscal year 1981 an amount equal to the product of the number of eligible children in average daily attendance in the schools of such agency in excess of 20 such eligible children multiplied by the current local expenditure rate of that local educational agency, plus $200 for each such eligible child in excess of 20.

“(B) For the purpose of this paragraph the current local expenditure rate shall be deemed to be the non-Federal expenditure rate of the local educational agency.

"(4) No provision of this Act which is inconsistent with the provisions of this section shall apply to the administration of this section.

"(5) Each local educational agency which is authorized to receive assistance under this section shall provide the Secretary with assurances that no eligible child counted for the purpose of this section shall be counted for payments made under any other provision of this Act.

"(b) There are authorized to be appropriated for the fiscal year 1981 such sums as may be necessary to carry out the provisions of this section.".

PART F—THE NAVAJO COMMUNITY COLLEGE ASSISTANCE PROGRAM

AMENDMENTS TO THE NAVAJO COMMUNITY COLLEGE ACT

SEC. 1451. (a) Section 5(a)(1) of the Navajo Community College Act is amended by striking out "two" and inserting in lieu thereof "three".

(b) Section 5(b) of such Act is amended by striking out paragraphs (1) and (2), by redesignating paragraph (3) as paragraph (2), and by inserting immediately before such paragraph the following:

"(b)(1) There is further authorized to be appropriated for grants to the Navajo Community College, for any fiscal year beginning on or after October 1, 1979, an amount equal to the amount necessary for operation and maintenance of the college, including, but not limited to, administrative, academic, and operations and maintenance costs.".

(c) Such Act is further amended by adding at the end thereof the following new section:

"EFFECT ON OTHER LAWS

"SEC. 6. Except as specifically provided by law, eligibility for assistance under this Act shall not, by itself, preclude the eligibility of the Navajo Community College to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.".

PART G—NEW LAND GRANT COLLEGES

AMERICAN SAMOA AND MICRONESIA LAND GRANT COLLEGES

SEC. 1461. (a) Section 506 of the Education Amendments of 1972 is amended—

(1) by inserting ", the Community College of American Samoa, the College of Micronesia," immediately after "The College of the Virgin Islands" in subsection (a);

(2) by striking out "Virgin Islands and Guam" each place it appears in subsection (b) and inserting in lieu thereof "Virgin Islands, Guam, American Samoa, and Micronesia"; and

(3) by striking out "Guam." in such subsection and inserting in lieu thereof "Guam and an equal amount to American Samoa and to Micronesia.".

(b) Section 5 of the Act of August 30, 1890 (7 U.S.C. 327), commonly referred to as the Second Morrill Act, is amended by inserting ", American Samoa, and Micronesia," immediately after "the Virgin Islands".

(c) Any provision of any Act of Congress relating to the operation of or provision of assistance to a land grant college in the Virgin Islands or Guam shall apply to the land grant college in American Samoa and in Micronesia in the same manner and to the same extent.

(d) Nothing in this section shall be construed to interfere with or affect any of the provisions of the April 17, 1900 Treaty of Cession of Tutuila and Aunu'u Islands or the July 16, 1904 Treaty of Cession of the Manu'a Islands as ratified by the Act of February 20, 1929 (45 Stat. 1253) and the Act of May 22, 1929 (46 Stat. 4).

PART H—MEMORIALS

SUBPART 1—THE ROBERT A. TAFT INSTITUTE

SHORT TITLE

SEC. 1471. This subpart may be cited as the "Robert A. Taft Institute Assistance Act".

GRANTS FOR DEVELOPMENT

SEC. 1472. (a) In recognition of the public service of Senator Robert A. Taft, the Secretary of Education is authorized to make grants to the Robert A. Taft Institute of Government, located in New York, New York.

(b) The total amount of grants under this section in any fiscal year may not exceed the total amount of private contributions received by the Institute for the fiscal year for which the grants are made.

(c) No payment may be made under this subpart except upon an application at such time, in such manner, and containing or accompanied by such information as the Secretary of Education may require.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1473. There are authorized to be appropriated $750,000 for the fiscal year 1981 and for each fiscal year ending prior to October 1, 1985.

SUBPART 2—GENERAL DANIEL JAMES MEMORIAL HEALTH EDUCATION CENTER

FINANCIAL ASSISTANCE AUTHORIZED

SEC. 1476. (a) In recognition of the public service of General Daniel James and as a memorial to General Daniel James, the Secretary of Education shall, in accordance with the provisions of this title, make a grant to establish the General Daniel James Memorial Health Education Center to be located at Tuskegee Institute, Tuskegee, Alabama.

(b) No grant may be made under subsection (a) of this section unless an application is made to the Secretary at such time and in such manner as the Secretary may provide. The application shall contain provisions designed to assure that—

(1) the building known as the General Daniel James Memorial Health Education Center will be located on the campus of Tuskegee Institute, Tuskegee, Alabama;

(2) the memorial will serve as a regional center for preventive health education and as a repository for papers and memorabilia relating to the life of General Daniel James; and

(3) such other reasonable conditions as the Secretary may require.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1477. (a) There are authorized to be appropriated $6,000,000 for the fiscal year 1981 to carry out the provisions of this title.

(b) Funds appropriated pursuant to this title shall remain available until expended.

SUBPART 3—THE WILLIAM LEVI DAWSON CHAIR OF PUBLIC AFFAIRS

SHORT TITLE

SEC. 1481. This subpart may be cited as the "William Levi Dawson Chair of Public Affairs Act".

ASSISTANCE FOR THE ESTABLISHMENT OF THE WILLIAM LEVI DAWSON CHAIR OF PUBLIC AFFAIRS

SEC. 1482. (a) The Secretary of Education is authorized to provide financial assistance in accordance with the provision of this section to establish the William Levi Dawson Chair of Public Affairs at Fisk University, Nashville, Tennessee.

(b) No financial assistance under this title may be made except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1483. (a) There are authorized to be appropriated such sums, not to exceed $750,000, for the fiscal year 1981, as may be necessary to carry out the provisions of section 1802 of this title.

(b) Funds appropriated pursuant to this title shall remain available until expended.

Part I—Technical Provisions

ADMINISTRATIVE AMENDMENTS

Sec. 1491. (a)(1) The Higher Education Act of 1965 (hereinafter in this Act referred to as the "Act") is amended by striking out "Commissioner" wherever it appears (except in section 1201(f)) and inserting in lieu thereof "Secretary".

(2) The Act is further amended by striking out "Commissioner's" wherever it appears and inserting in lieu thereof "Secretary's".

(3) The Act is further amended by striking out "Secretary of Health, Education, and Welfare" wherever it appears (except in section 1201(e)) and inserting in lieu thereof "Secretary".

(b)(1) Section 1201(e) of the Act is amended to read as follows:

"(e) The term 'Secretary' means the Secretary of Education.".

(2) Section 1201(f) of the Act is repealed.

(3) Section 1201 of the Act is amended by adding at the end thereof the following:

"(m) The term 'Department' means the Department of Education.".

CONTRACT AUTHORITY

Sec. 1492. The authorization to enter into contracts or other obligations under the Act, as amended by this Act, shall be effective for fiscal year 1981 and any succeeding fiscal year only to the extent or in such amounts as are provided in advance in appropriation Acts.

EFFECTIVE DATE

Sec. 1493. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on October 1, 1980.

(b)(1) The amendment made by section 404(b)(4) of this Act to section 415C(b)(4) of the Act shall be effective on October 1, 1979.

(2) Except as otherwise provided, the amendments made by part B of this Act shall apply to loans made on or after October 1, 1980.

(3) The amendments made by section 415(b) shall be effective with respect to any loan made to a student borrower who on October 1, 1980, has no obligation to repay any amount of principal or interest on any loan made, insured, or guaranteed under part B of title IV of the Act.

(4) The amendments made by part D of this Act shall apply to loans made under part E of the Act on or after October 1, 1980.

(5) The amendment made by section 701 of this Act adding section 731 of the Act shall apply to loans made under such section 731 on or after October 1, 1980.

And the House agree to the same.

Carl D. Perkins,
Frank Thompson, Jr.,
John Brademas,
William D. Ford,
Joseph M. Gaydos,
Mario Biaggi,
Paul Simon,
Austin J. Murphy,
Ted Weiss,
Peter A. Peyser,
William Ratchford,
Geo Miller,
John Ashbrook,
John Buchanan,
James M. Jeffords,
Mickey Edwards,
Thomas J. Tauke,
Thomas E. Petri,
Managers on the Part of the House.
Claiborne Pell,
Harrison A. Williams, Jr.,
Jennings Randolph,
Robert T. Stafford,
J. K. Javits,
Dick Schweiker,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

IN MEMORIAM

The conferees note with great sadness the absence from our deliberations of Mr. William F. Gaul, Associate General Counsel of the House Committee on Education and Labor.

Mr. Gaul has provided a central thread of informed judgment and wise counsel throughout all previous conference committee deliberations on the Higher Education Act, from its original enactment in 1965 through the amendments of 1968, 1972, and 1976.

Mr. Gaul worked tirelessly on the House version of this reauthorizing legislation through its enactment last November. But shortly thereafter, he was stricken by a fatal illness which confined him to a hospital quarters during our conference committee deliberations.

We have greatly missed his good and wise counsel in our deliberations. We wish he could have been with us. But most of all, we wish to record, as a part of this conference report, our great and continuing indebtedness to Mr. Gaul for the extraordinary contributions he has made throughout the last fifteen years to the creation, development, and refinement of the Higher Education Act.

On behalf of the millions of postsecondary students and the thousands of postsecondary institutions who have and will continue to benefit from the Higher Education Act, we wish to state that Mr. William F. Gaul's leadership role in constructing this legislation will be greatly noted and long remembered.

TITLE I—EDUCATION OUTREACH

1. The Senate amendment, but not the House bill, in Part A of Title I establishes a new Commission on National Development in Postsecondary Education, a tripartite Commission of 25 members to be appointed by the President, the President pro tem of the Senate, and Speaker of the House. The function of the Commission shall be to review national, state, and institutional planning policies to examine the effectiveness of Federal financial assistance to students and institutions

in conjunction with State and institutional aid policies; to consider the research capacity of institutions and the relationship between institutions and the public and private sector in promoting research; and to examine the resources of institutions and the effect of demographic changes which will impact on their ability to meet social and economic needs. The Senate amendment authorizes $3 million for the Commission for the period beginning October 1, 1981, through March 1, 1983.

The House recedes with an amendment extending the life of the Commission through December 31, 1983, and adding as a purpose of the Commission a study of the needs of adult postsecondary students.

2. The provisions of the House bill and the Senate amendment with respect to the allocation of funds under Title I of the House bill and Part B of Title I of the Senate amendment are described in the following tables:

ALLOCATION FORMULA

(Unless indicated, each State must have an agreement for comprehensive statewide planning in order to receive funds under the following provisions:)

HOUSE—TITLE I	SENATE—TITLE I-B
Statewide Planning Program—Sec. 102. 20% of total appropriation is allotted on the basis of adult population for Statewide planning. Each State must receive at least $60,000.* *State Grant Program*—Sec. 103. 70% of the total appropriation is allotted to States for education information and continuing education services. Half of this amount is allotted equally to all states, and half is allotted on the basis of adult population. Each State must receive at least $90,000.* *Federal Discretionary Grant*—Sec. 107. 10% of the total appropriation shall be reserved for the Federal discretionary grant program.	*Sec. 112.* From 90% of appropriation, each State shall receive an amount equal* to the FY 1979 level of funding for title I, Sec. 418A, and Sec. 1203. If the level of appropriations exceeds that amount the excess shall be distributed on the basis of adult population. (If, in any fiscal year, a State does not wish to enter into an agreement for statewide planning, the Secretary shall allot to that State an amount equal to the amount the State would receive for continuing education and education information services.) *Sec. 116.* 10% of the appropriations shall be reserved for the Federal discretionary grant Program established under Sec. 116.

*Ratable reduction language is provided in the event appropriations are insufficient.

AUTHORIZATION OF APPROPRIATIONS

HOUSE

TITLE I	AMOUNT/FY
	$100 million/FY '81 $125 million/FY '82 $150 million/FY '83 $175 million/FY '84 $200 million/FY '85

SENATE

TITLE I	AMOUNT/FY
Part A	$3 million (for period from 10/1/81 thru 3/1/83).
Part B	$18.5 million/FY '81 21.5 million/FY '82 24.0 million/FY '83 27.5 million/FY '84 32.0 million/FY '85
Part C	
—Subpart I	$9.5 million for each of FY '81–85.
—Subpart II	7.5 million for each of FY '81–85.
—Subpart III	50 million for each of FY '81–85.

USE OF FUNDS

HOUSE TITLE I	SENATE PART B
Statewide Planning	*Statewide Planning*
● At least 50% of a state's allotment must be used for planning continuing education activities for adults. ● Up to 50% of a state's allotment may flow through for use under the state grant program, at the state's discretion.	● If the appropriation level is *less than $18.5 million*, each state must use at least 15%, but not more than 20%, of its allotment for statewide planning. ● If the appropriation level is *more than $18.5 million, but less than $24 million*, each state shall use at least 10% but not to exceed 15%, of its allotment for statewide planning. ● If the appropriation level *exceeds $24 million*, then a state shall not use more than 10% of its allotment for statewide planning. ● Same as House provision *except* the Secretary may waive if state can demonstrate it has fulfilled the statewide planning needs for adults.
Information Services	*Information Services*
● State's discretion as to amount of funds used for information services under state grant program.	● Not less than $50,000 nor more than 12%, whichever is greater, shall be used for information services.
Continuing Education	*Continuing Education*
● State's discretion as to amount funds used for continuing education activities under state grant program.	● Each state shall use amounts remaining after reserve for statewide planning and information services.

Following is the conference agreement:

Allocation formula and uses of funds

The House recedes to Senate Part B with an amendment which provides that, with respect to statewide planning, up to 50 percent of a State's funds available for this program may be used for continuing education programs under section 115 and that, for the purposes of operating educational information programs, states may make grants to and enter into contracts with institutions of higher education, public private institutions and organizations, business, industry, and labor and any combination thereof. The conferees intend that the list of continuing education activities under section 115 is not exclusive.

The Senate recedes with an amendment which provides that, for the purposes of state grants, each state shall receive an allotment of funds from available appropriations based 60 percent on relative state adult population and 40 percent on an equal basis, except that no state shall receive less than $187,500 in any fiscal year. Of its allotment, any state may use up to 5 percent or $40,000 of its portion available for continuing education, whichever is greater, for the purposes of administration or operation of continuing education activities.

Authorization of appropriations

The conference substitute authorizes the following amounts for Part B:

Fiscal year:	*Millions*
1981	$20
1982	40
1983	60
1984	80
1985	100

3. Both the House bill and the Senate amendment contain comparable provisions concerning the use of comprehensive statewide planning funds.

The conference substitute incorporates all provisions.

4. The Senate amendment, but not the House bill, permits the Secretary to waive the requirement that States use 50 percent of comprehensive statewide planning funds for planning for Continuing Education if the State demonstrates it has adequately provided for meeting the needs of adult learners.

The House recedes.

5. The House bill, but not the Senate amendment, restricts the use of funds which a State may use for conducting studies of topics consistent with the purposes of comprehensive statewide planning and statewide planning for Continuing Education.

The Senate recedes.

6. The House bill, but not the Senate amendment, specifically authorizes States to make grants and enter into contracts with institutions of higher education, public and private institutions and organizations, business, industry and labor, and any combination thereof.

The Senate recedes.

7. The House bill, but not the Senate amendment, requires particular attention to homemakers in the provision of educational and occupational information and counseling services.

The Senate recedes.

8. The Senate amendment, but not the House bill, authorizes the provision of child care services to assist individuals in Continuing Education.

The House recedes.

9. The Senate bill contains the following restrictions for the use of funds for providing child care services:

(A) that the State has established a cooperative agreement with the agency responsible for coordinating child care services in the State,

(B) that funds available for child care services will be paid only to child care providers licensed or likely to be licensed in the State, and

(C) that a State may not use more than 5 percent of the sums available for Continuing Education programs provided directly by the State.

The House recedes on item (A); the Senate recedes on item (B); and the House recedes on item (C) with an amendment providing that there may be spent for the administration of programs under section

115 and the direct operation by the State of continuing education programs 5 percent of the sums available or $40,000, whichever is greater. The "operation" of a program under the 5 percent or $40,00, whichever is greater, provision applies only to those programs that are not otherwise competing for funds under the remainder of the continuing education monies.

10. (a) The House bill, but not the Senate amendment, authorizes the Secretary to provide funds to assist States to effectively perform their functions of authorizing institutions of higher education.

(b) The Senate amendment, but not the House bill, authorizes the Secretary to provide funds to support demonstration child care projects and to provide pre-service and in-service training to personnel involved in child care programs.

a. The Senate recedes.

b. The House recedes with an amendment eliminating the support of demonstration child care projects.

11. The House bill provides that payments made under Sections 102 and 103 shall not exceed 2/3rds of the cost of activities funded under those Sections. The Senate bill provides that payments under all of Part B of the Title I of the Senate amendment shall not exceed 2/3rds of the costs of activities assisted under that part.

The House recedes.

12. The House bill, but not the Senate amendment, provides that States may use 50% of the funds received under Section 102 (relating to statewide planning) for the purpose of carrying out programs under Section 103 (relating to State grant programs).

The Senate recedes.

13. The Senate amendment, but not the House bill, requires the Secretary to evaluate the extent to which age is a barrier to participation in postsecondary education and the potential for greater participation in such education by individuals age 65 and older.

The House recedes with an amendment changing the age to 60.

14. The House bill, but not the Senate amendment, requires the Secretary to report to the President and the Congress on the results of the investigation and study not later than two years after the date of enactment of this Act. The Senate amendment, but not the House bill, requires the Secretary to coordinate the study with the activities of the Commission on National Development in Postsecondary Education, the National Institute of Education, and other studies authorized by this Act.

The Conference substitute incorporates all of the provisions of this special study within the Commission of National Development in Postsecondary Education authorized by Part A of this Title.

15. The Senate amendment, but not the House bill, establishes a new Part C of Title I to induce institutions of higher education to engage in limited programs of policy development to test essential areas for growth and adaption in future years.

The Senate recedes.

16. The Senate amendment, but not the House bill, authorizes grants and contracts to States and postsecondary institutions to attempt cost-effective conversions of curriculum, transformations of staffing and

research patterns, and collaborative cost-sharing relationships with institutions to replace duplicative educational programming and shared arrangements based on demographic and labor market trends.

The Senate recedes.

17. The Senate amendment, but not the House bill, authorizes a program to encourage and to support the efforts of all forms of postsecondary institutions to serve women in their workplaces with the collaboration of labor unions and employers.

The House recedes with a substitute amendment making this program a separate Title in the Higher Education Act and eliminating grants to national organizations.

18. The Senate amendment, but not the House bill, authorizes a program of providing to 50 educational institutions incentives to devote their community service and research resources to solve the problems of massive youth unemployment. This provision creates a demonstration program whereby the colleges would organize their technical assistance capabilities in a discretionary grant program and assist local decision-making in several areas: (1) development of individual employability plans for the young people who are assisted in comprehensive community efforts to remedy youth unemployment; (2) design of community-oriented achievement benchmarks for student progress; (3) means to establish labor union and employer collaboration on skills certification mechanisms to assist transitions from education and training to work; (4) development of detailed local labor market statistics and forecasts so as to assist the education and employment services in skills remediation and preparation of lasting value to young people experiencing comprehensive youth emloyment efforts; and (5) exloration of applying college resources in retraining unemployed persons.

The Senate recedes.

TITLE II—COLLEGE AND RESEARCH LIBRARY ASSISTANCE AND LIBRARY TRAINING AND RESEARCH

19. The House bill authorizes appropriations of $60 million for Part A, $60 million for Part B, $20 million for Part C, and $15 million for Part D of Title II for each of the fiscal years 1981–1985. The Senate amendment authorizes appropriations for Part A and B combined of $15 million for fiscal year 81, $17 million for fiscal year 82, $19.5 million for fiscal year 83, $22 million for fiscal year 84, and $25 million for fiscal year 85. The Senate bill also authorizes for Part C $8 million for fiscal year 81, $9 million for fiscal year 82, $10.5 million for fiscal year 83, $12 million for fiscal year 84, $14 million for fiscal year 85. The Senate amendment authorizes $750,000 for each of fiscal years 81 and 82 and such sums as may be necessary for any remaining fiscal year ending prior to October 1, 1985 for Part D.

The conference substitute authorizes the following amounts:

Part A:

Fiscal year:	*Millions*
1981	$10
1982	30
1983	30
1984	30
1985	35

	Millions
Part B:	
Fiscal year:	
1981	**10**
1982	**30**
1983	**30**
1984	**30**
1985	**35**
Part C:	
Fiscal year:	
1981	**10**
1982	**15**
1983	**15**
1984	**15**
1985	**15**
Part D:	
Fiscal year:	
1981 and 1982	**750,000**
Fiscal years 1983 to 1985—such sums.	

20. The House bill, but not the Senate amendment, provides that no funds are authorized to be appropriated for Part D unless each of the appropriations for Part A, B or C equals or exceeds the amounts appropriated for that Part for fiscal year 79.

The Senate recedes.

21. The House bill, but not the Senate amendment, extensively reorganizes Title II of the Act. Part A is focused on general support for college libraries. The special grants currently authorized in Part A are transferred to Part B where there are emphasized two forms of special purpose assistance. The maximum Basic Grant under Part A is increased from $5,000 to $10,000. The House bill repeals the authority for Supplemental grants and for the Advisory Council on College Library Resources. In addition, the House bill repeals the authority of the Secretary to make grants to educational institutions which are not accredited on the basis of the finding that acquisition of library sources would render the institution accreditable.

The Senate amendment retains current law in Part A of Title II.

The Senate recedes.

22. The House bill, but not the Senate amendment, requires that institutions applying for funds under Title II supply information about the institution itself and its library resources to the Secretary. There is no comparable provisions in current law, which is retained by the Senate amendment.

The House bill, but not the Senate amendment, amends current law to permit a grant recipient in the grant year for which funds are sought to choose between the average annual aggregate amount or the average amount per full-time equivalent student it expended for library material expenditures during the two preceding fiscal years to substantiate its maintenance of effort. Current law requires the use of the average annual aggregate amount.

The House bill, but not the Senate amendment, amends current law to specify under which circumstances the Secretary may waive the maintenance of effort provisions.

The Senate recedes.

23. The House bill provides for a division of the available funds of one-third for library career training, one-third for research and demonstration and one-third for special purpose grants.

The House bill deletes the special advisory committee to the secretary on research and demonstration for the improvement of libraries and training in libraianship. The House bill deletes language relating to section 3709 of the Revised Statutes (41 U.S.C. 5). The House bill deletes the authorization for special purpose grants to institutions of higher education which demonstrate a special need for additional library resources and which indicate such a grant would make a substantial contribution to the quality of educational resources. The House bill removes the restriction under special purpose grants to combinations of institutions of higher education that the funds may be used only for books, periodicals, documents, magnetic tapes, phonograph records, audiovisual materials and other related library materials. The House bill adds a provision to the authorization for special purpose grants to public and private nonprofit library institutions limiting the grant's purpose to establishing, developing or expanding programs or projects that improve their services. The House bill adds a new authorized activity to the special purpose grant program permitting grants to institutions of higher education to develop or expand programs or projects to serve the community in which the institution is located. The House bill does not give the institution of higher education a choice in base years for providing maintenance of effort for special purpose grants. It requires the institution to expend during the grant year at least as much as it did for all library purposes in the two fiscal years immediately prior to the grant application. Current law permits either this approach or using the two fiscal year immediately prior to June 30, 1965. The House bill prohibits an institution from receiving a resource development grant or a special purpose grant if it reecives a grant under Part C.

The Senate amendment continues existing law under all of Part B.

The Senate recedes.

24. The House bill authorizes the establishment of a National Periodical Center. The Senate amendment authorizes a study of the feasibility and advisability of establishing a National Periodical system, and, if found feasible and advisable, authorizes the preparation of a design for such system. Both bills establish a nonprofit corporation to carry out the purposes of Part D of Title II.

The House recedes.

25. The House bill, but not the Senate amendment, contains provisions relating to cost reimbursement, cooperative agreements with certain national, State, and local institutions, the establishment of regulatory offices, and the coordination of the training of librarians.

The House recedes.

26. The Senate amendment, but not the House bill, contains certain provisions as to the participation and fees payable to copyright owners, duplication of, or adverse impact on, private sector activities, and coordination with existing library programs.

The House recedes.

27. The Senate amendment, but not the House bill, requires any design to implement the periodical system to specify the role of the Corporation in the management of the system and an estimate of the cost of carrying out the system for each fiscal year.

The House recedes.

28. The Senate amendment, but not the House bill, requires the Board to be equitably representative of certain groups and interests.

The House recedes.

29. The House bill provides that the term of office of Board members shall be six years. The Senate amendment provides terms of two years. The House bill provides for staggered terms and provides that no member shall be eligible to serve more than two 6-year terms.

The House recedes.

30. The Senate amendment, but not the House bill, specifically provides that the Corporation shall be subject to the Government in the Sunshine Act.

The House recedes.

31. The House bill provides for annual reports from the Corporation on March 1st of each year. The Senate bill provides for submission of the implementing design not later than December 31, 1981, and provides that the design may not be implemented unless it is approved in whole or in part by a Joint Resolution of the Congress.

The House recedes.

TITLE III—INDUSTRIAL AID

32. The House bill makes major revisions in Title III. The purposes are briefly stated in the title's opening section. Institutional assistance under Title III must be used to improve the academic quality, institutional management and fiscal stability of developing institutions. Eligibility as a developing institution is based on an institution's enrollment of a substantial percentage of students from low-income families and average educational and general expenditures which are low per full-time equivalent student in comparison with average educational and general expenditures per full-time equivalent student of instittions that offer similar instruction.

The House bill provides that a branch institution is eligible to compete for funds under Title III in and of itself.

The Secretary is authorized to waive the requirement that an institution have a low educational and general expenditure per full-time equivalent student in certain cases.

The House bill provides an authorization of $140 million in fiscal year 1981; $160 million in fiscal year 1982; $180 million in fiscal year 1983; and $200 million for fiscal years 1984 and 1985. Under the new Challenge Grant program, additional authorizations of $25 million for fiscal year 1982; $35 million for fiscal year 1983; $45 million for fiscal year 1984; and $50 million for fiscal 1985 are provided.

The House bill provides that grant awards for community and junior colleges cannot be less than 24 percent of the funds in any fiscal year, but may be greater.

In addition to the two criteria used to establish eligibility to compete as a developing institution, any institution applying for assistance under this title must also be degree-granting for at least five years prior to applying for assistance and accredited by a nationally recognized accrediting agency or association.

The House bill authorizes the Secretary to waive the five-year degree-granting requirement for institutions applying for assistance if the development of that institution will substantially increase the higher education opportunities of American Indians, Hispanics and low-income rural people.

The House bill instructs the Secretary to give special consideration to any institution submitting an application to improve that institution's faculty development, funds and administrative management development and improvement of academic programs, acquisition of equipment for use in strengthening funds management and academic programs, joint use of facilities such as libraries and laboratories, and student services.

The House bill establishes two categories of grants. Any eligible institution can apply to receive assistance for one-to-three years. Such a grant is renewable indefinitely. Under a second category, institutions can apply for a non-renewable grant of four-to-seven years. The bill requires that 25 percent of the appropriation (excluding the appropriation for the Challenge Grant program) be reserved for non-renewable grants. If an insufficient number of institutions apply for the non-renewable grants and all funds are not obligated, the bill provides that the funds be carried over to the suceeding fiscal year for later use in the four-to-seven year program.

In a case where the institution receives notification of a multiple-year award under Title III, the bill requires that the Secretary make awards annually from the appropriation for the fiscal year in which the grant is to be used.

The Secretary may make one-year awards for the purpose of planning grants. The planning must be consistent with the purpose of the title.

The applicant institution must submit a detailed analysis of how it will provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available under this title. The bill eliminates from current law the provision that required institutions to participate in consortia or a bilateral arrangement. The bill permits this activity.

The House bill requires that any institution receiving assistance under this title must report at least annually on the progress of its development activities. Any institution failing to comply with this requirement may, at the Secretary's discretion, have is future year grants withheld.

The House bill establishes a method for selecting independent readers who are responsible for reviewing application proposals. Institutions submit reader nominees to the Secretary. The Secretary then selects reviewers who have expertise in the evaluation of Title III projects. Included among these individuals must be representatives of the types of institutions receiving Title III grants. The Secretary is required to assure that no reader has any conflict of interest regarding the application being evaluated which might impair the impartiality wih which the individual conducts the review.

All readers must receive instruction from the Secretary regarding the evaluation process, including (1) explanations and examples of the types of activities that should receive special consideration for grant awards; (2) an enumeration of the factors to be used to determine the quality of the applications; and (3) an enumeration of the factors to be used to determine whether a grant should be awarded, and the amount and duration of the grant. In awarding grants, the Secretary may only consider those factors which are explained to the readers.

A Committee on Review is established which would review all grant award recommendations made by the readers which were used by the Secretary to make grant awards. The Committee would then submit a report to the Secretary which contains (1) the recommendations of the independent readers; (2) recommendations the Committee considers appropriate to provide for equitable adjustments in the amounts recommended by the readers in order that the total amount recommended for all grants not exceed the amount appropriated for Title III; and (3) recommendations regarding the amount and duration of any grant after adjustment. After reviewing the Committee's report, the Secretary would make final awards.

The Committee on Review will consist of ten members appointed by the Secretary with one representative each from private junior colleges, private institutions that award bachelor's degrees, public junior or community colleges, public institutions that award bachelor's degrees and six other members representing the above institutions. The Secretary will appoint these members after consultation with the various postsecondary education institutions. No officer or employee of the United States can serve as a Committee member and the term of office will be two years.

Not later than June 30 of each year, the Secretary must publish in the Federal Register the name of each institution which submitted an application, the average score given to the applications by the readers, any changes in the average scores recommended by the Committee, and the recommendations of the Committee regarding the recipients and amounts of the grants.

The House bill establishes a new Challenge Grant program, the purpose of which is to provide an incentive for institutions to seek alternative sources of funding.

The Challenge Grant program, like the basic Title III program, is a competitive grant program and all requirements, limitations and procedures applicable in the basic Title III program are also applicable in the Challenge Grant program, unless otherwise stated.

In the Challenge Grant program, the House bill requires the Secretary to give priority to those institutions participating in the four-to-seven-year grant program.

33. The Senate amendment completely rewrites existing Title III, Strengthening Developing Institutions program. It divides the Title into two parts: Part A would provide short-term Federal assistance to institutions with special needs. Such institutions have enrollments which include a substantial percentage of students from low income families and low general and educational expenditures for full time equivalent undergraduate students. In determining institutional eligibility the Secretary may also consider institutional characteristics, such as limited library resources, little or no endowment, low percentage of faculty with doctorate degrees, and a high student-to-faculty ratio. Part A assistance will be used to provide for faculty development, administrative development, the improvement of academic programs,

the development of new and improved student services, joint use of facilities such as libraries and laboratories among institutions, and the acquisition of equipment to strengthen and improve management and academic programs. Assistance under this Part would be limited to five years with institutional matching required after the second year, in an effort to "graduate" institutions from the program and to achieve an institutional commitment to the purposes of this Part.

Part B of this Senate amendment recognizes that institutions which enroll a large number of students from low income families face a special burden. These institutions do not need project grants; they need general operating assistance. Part B would provide that assistance. The factors that would determine eligibility for Part B assistance would be factors such as the percentage of low income students at the institution, the per student expenditure at the institution, the amount of public and private funds available to the institution, and the institution's own program of financial assistance to those students. There is no time limit to receiving assistance under Part B.

The Senate amendment also establishes a new challenge grant initiative under Part A of Title III from a 10 percent set-aside of funds appropriated and available for that Part. In order to be eligible for a challenge grant, on a 50–50 matching share basis, an institution must have received, or be eligible to receive, a grant under Part A criteria established for institutions having special needs. The 50 percent matching share for institutions must come from new sources; the Federal Government will not match money that is already avaliable to the institution.

Existing law provides that 24 percent of funds under Title III must go for awards to community and junior colleges. The Senate amendment provides that not less than 30 percent of the funds awarded in Parts A and B should go to community and junior colleges.

The Senate amendment provides that a branch institution located in a community different from that of its parent institution is eligible to compete for funds under this Title in and of itself. The Senate amendment also requires the Secretary to give priority to cooperative arrangement applications in awarding funds under Part A of this Title.

Existing Title III permits the Secretary to grant waivers to Title III recipients for matching requirements under Titles II, IV, VI, or VII of the Higher Education Act. The Senate amendment does not permit such waivers. However, the Senate amendment does allow the Secretary to waive the 5-year degree granting requirement of Part A to institutions which will substantially increase the higher education opportunities of American Indians and Hispanics, of individuals living in rural areas whose higher education needs are being unserved, of low income individuals, and of black students.

The Senate amendment establishes the following authorization levels:

Fiscal year:	
1981	$161,000,000
1982	185,000,000
1983	213,000,000
1984	245,000,000
1985	284,000,000

Appropriations for each fiscal year must be divided evenly between Parts A and B of the Title. For purposes of making challenge grants the Secretary can reserve up to 10 percent of Part A funds. In addition, the Secretary shall assure that in each fiscal year the amount available to the sector of traditional black colleges and universities shall not be less than the amount that sector received in Fiscal Year 1979.

The conference substitute creates a title III program which contains three parts. Part A, Strengthening Institutions, is derived from the provisions of the House bill. Part B, Aid to Institutions with Special Needs, contains provisions that were in Part A of the Senate Amendment. Fifty percent of the appropriation will go to each of these parts.

Under Part B of the conference substitute, the institutions that historically have served substantial numbers of Black students shall be assured that their sector will receive not less than 50 percent of the amount that such sector received in fiscal year 1979 under the current Title III program.

The conference substitute incorporates the provisions of the House bill pertaining to challenge grants to institutions eligible for assistance under Part A or Part B.

The conference substitute modifies the provisions of the House bill establishing an application review process and a committee on review to provide only for an application review process.

The conferees intend that unique institutions such as the College for Human Services, which charge no tuition or fees, rely exclusively on CETA wages to support its students and serve students who meet the Department of Labor's low-income guidelines, be recognized as a developing institution eligible to apply for funds under this program.

The criteria used to determine eligibility for participation in the title III program under either Part A or Part B includes the average educational and general expenditure per full-time equivalent undergraduate student. The inclusion of the word "undergraduate" was intentional.

During the Senate's deliberation on this legislation, some concerns were raised that this language was not entirely clear and furthermore, may create some reporting difficulties since many institutions would not be able to identify separately the expenditures made for undergraduate instruction.

Clearly the intent of the conference in accepting this Senate language that would apply to the educational and general expenditures definition under both Part A and Part B was that the Secretary should not consider institutional expenditures for high cost professional training such as medical, dental, and legal programs which are organized, budgeted, and conducted separately from regular graduate and undergraduate instruction.

The conference substitute authorizes the following amounts for Parts A and B:

Fiscal year:	Millions
1981	$160
1982	185
1983	210
1984	245
1985	280

The substitute provides the following authorizations for the challenge grant program:

Fiscal year:	*Millions*
1982	$25
1983	35
1984	45
1985	50

TITLE IV—STUDENT ASSISTANCE

34. The House bill extends the Basic Educational Opportunity Grant program through FY 1986. The Senate amendment extends this progrom through FY 1985.

The House recedes.

35. The House bill, but not the Senate amendment, provides that the purpose of the Basic Grants program is to provide a Basic Grant that will meet 75 percent of the students' costs of attendance for academic year 1985–86, but not in excess of $3,600.

The Senate recedes with an amendment changing 75 percent to 70 percent and $3,600 to $3,700.

36. The Senate amendment, but not the House bill, designates Basic Grants as "Pell Grants".

The House recedes.

37. Both the House bill and the Senate amendment provide Basic Grants in specified amounts minus an amount determined to be the expected family contribution. The amounts specified are as follows:

Academic year	House bill	Senate amendment
1981–82	$1,980	$1,900
1982–83	2,160	2,000
1983–84	2,340	2,200
1984–85	2,520	2,400
1985–86	2,520	2,600

The Conference substitute provides for the following maximum Basic Grants:

$1900 for academic year 1981–82.
$2100 for academic year 1982–83.
$2300 for academic year 1983–84.
$2500 for academic year 1984–85.
$2600 for academic year 1985–86.

38. The House bill changes the date for publication of a schedule of reductions for less than full-time attendance from February 1 to January 1 of each year. The Senate amendment changes this date from February 1 to October 1 of each year.

The Conference substitute provides for publication dates of January 1, 1981, October 1, 1981, and October 1 of each succeeding year.

39. Both the House bill and the Senate amendment limit the amount of Basic Grants to a percentage of the cost of attendance based upon the amount of the maximum grant which is available for that year. These limitations are as follows:

Percentage of cost of attendance	Maximum grant amount	
	House bill	Senate amendment
50 percent	Less than $1,980	Less than $2,000.
55 percent	$1,980 to $2,159	$2,000 to $2,399.
60 percent	$2,160 to $2,339	$2,400 or more.
65 percent	$2,340 to $2,519	
70 percent	$2,520 or more	

The Conference substitute provides that the cost of attendance limitation shall be 50 percent when the maximum Pell Grant is less than or equal to $1900; 55 percent when the maximum Pell Grant is more than $1900 but less than $2100; 60 percent when the maximum Pell Grant is at least $2100 but less than $2300; 65 percent when the maximum Pell Grant is at least $2300 but less than $2600; and 70 percent when the maximum Pell Grant is $2600.

40. The House bill allows the Secretary through regulation to develop a schedule of reduction in cases of less than full funding. Such schedule is required to contain a single reduction formula in which the percentage increases uniformly as the entitlement decreases, and requires that no payment of less than $200 shall be made in any case.

The Senate amendment establishes a statutory schedule of reductions to be paid in the case of less than full funding. Such schedule is based upon the student's eligibility index as calculated prior to the cost of attendance limitation.

The House recedes. The conferees intend that the term "eligibility index" have the same meaning as it has in the regulations governing this program.

41. The House bill, but not the Senate amendment, provides that an institution of higher education entering into agreements to disburse Basic Grants shall not be deemed, by virtue of such agreement, a contractor maintaining a system of records to accomplish a function of the Secretary of education.

The Senate recedes. The Conferees wish to emphasize that the provisions of this Section apply solely to the Privacy Act and in no way are meant to interfere or impinge upon any civil rights statutes.

42. The Senate amendment, but not the House bill, removes the five academic year eligibility limitation and substitutes a limitation based on the period required for completion of the first undergraduate baccalaureate course of study.

The Senate amendment also removes the one-year extension of eligibility for noncredit remedial courses of study and substitutes an extension for such study determined by the institution as necessary to enable the student to earn a baccalaureate degree.

The House recedes.

The conferees note that this provision should not be construed to allow a student to pursue a second baccalaureate degree at another school with such grants. The conferees also intend that a period of study in a non-bacalaureate degree program should be included as part of the period required for the completion of a baccalaureate degree. Finally, the conferees intend that this provision should not be construed to deny eligibility to students enrolled in a non-baccalaureate degree program.

43. The Senate amendment, but not the House bill, eliminates the definition of "noncredit remedial course of study".

The House recedes.

44. The House bill extends the provisions of the Basic Grant program which require that no Basic Grant be paid for any fiscal year unless the appropriations for certain other programs equal or exceed certain specified amounts. The House bill raises the minimum required for Supplemental Educational Opportunity Grants from $370 million to $400 million (or $480 million when appropriations are available to make Basic Grants of at least $1,980). The House bill raises the amount required for Work-Study payments from $500 million to $550 million. The House bill continues the requirement that appropriations for Direct Loans capital contribution equal or exceed $286 million, and adds a requirement that appropriations for State Student Incentive Grants equal or exceed $76,750,000.

The Senate amendment provides that no Basic Grants in excess of certain specified amounts should be made unless the amount appropriated for certain specified programs equals or exceeds certain levels. These amounts are as follows:

Maximum basic grant payment	Appropriations for SEOG	Appropriations for work-study	Appropriations for NDSL
$1,900	$370,000,000	$500,000,000	$286,000,000
$2,000	400,000,000	500,000,000	286,000,000
$2,200	420,000,000	500,000,000	286,000,000
$2,400	440,000,000	500,000,000	286,000,000
$2,400 or more	480,000,000	500,000,000	286,000,000

The Senate amendment further provides that these requirements shall not be construed as directing the Committees on Appropriations to make specific appropriations and amounts available.

The conference substitute provides that Pell grants in excess of $1800 may not be paid unless appropriations are provided for the SEOG, Work-Study, NDSL and SSIG programs at various specified levels. The Senate conferees wish to point out, however, that, in their opinion, these specified funding levels are advisory.

45. The House bill, but not the Senate amendment, eliminates the authority to make administrative cost payments of $10 per student to institutions of higher education. The House bill, but not the Senate amendment, eliminates the existing authority of the Secretary of Education to enter into agreements with States for the processing of Basic Grant applications.

The Senate recedes.

46. The House bill but not the Senate amendment provides that it is the purpose of the Supplemental Grant program to provide grants which, in combination with family or student contribution and Basic Grant and State Student Incentive Grant assistance, will meet 75 percent of the student's cost of attendance, unless the institution determines that a greater amount of assistance would better serve the purposes of part A of title IV.

The House recedes.

47. Current law (which the Senate amendment extends) contains a separate authorization of appropriations for payments to students in

their initial academic year and for payments to students in suceeding academic years. The House bill eliminates this separate authorization and provides a single authorization of appropriations of $500 million for fiscal year 1980 and fiscal year 1982, $600 million for fiscal year 1983, $700 million for fiscal year 1984, and $800 million for fiscal year 1985.

The conference substitute maintains the separate authorizations for initial year and continuing year appropriations for the SEOG program. In addiiton, the conference substitute authorizes initial year appropriations of $400 million for fiscal years 1981 through 1985 and authorizes appropriations of such sums as may be necessary for continuing year SEOG awards for fiscal years 1981 through 1985.

48. The House bill, but not the Senate amendment, eliminates the limitation contained in current law which restricts the amount of Supplemental Grants to one-half of the sum of the total amount of student financial assistance provided to such student by an institution of higher education.

The Senate recedes.

49. The House bill, but not the Senate amendment, limits the period for receipt of Supplemental Grants to five academic years (or an additional year in the case of students requiring noncredit remedial courses of study). The Senate amendment eliminates the academic year limitation from current law.

The House recedes.

50. The Senate amendment, but not the House bill, specifically requires that less-than-half-time students meet all eligibility requirements.

The House recedes.

51. The House bill, but not the Senate amendment, revises the apportionment and allocation provisions of the Supplemental Grant program (1) to make such provisions applicable to a single appropriation (rather than to the appropriations for only first year students); (2) by basing the minimum allotments of States on the amount of their allotment for fiscal year 1979 (rather than on the apportionment of first year funds for fiscal year 1972); and (3) by basing the allocation on the number of fulltime equivalent undergraduate students (rather than the number of fulltime equivalent number of undergraduate and graduate students).

On item (1), the House recedes; item (2) the House recedes, and item (3) the Senate recedes.

52. The Senate amendment, but not the House bill, revises the intrastate allocation requirements to require the Secretary of Education to allocate funds in accordance with a formula which determines institutional need for Supplemental Grant funds by subtracting from 75 percent of the total student expenses the sum of family and student contributions and Basic Grants and SSIG assistance. The Senate amendment, but not the House bill, prohibits the Secretary from issuing any regulation for such formula which has the effect of penalizing institutions that are required by State law to provide student financial assistance from their own funds, and yet are not free under laws in effect on January 1, 1979 either to select the recipients of such assistance or to adjust the criteria by which the recipients are selected. The House

bill prohibits the Secretary from issuing any regulation which has the effect of penalizing institutional or State efforts to provide need-based assistance. The Senate amendment, but not the House bill, further provides that the allocation formula not result in any institution receiving less Supplemental Grant funds than it received for fiscal year 1979.

The conference substitute determines institutional need for supplemental grant funds by subtracting from 75 percent of the total student expenses the sum of family and student contributions, Pell grants, SSIG assistance including that portion of State funds required to match Federal SSIG funds, and 25 percent of grants and awards made by the institution from its own resources. The substitute retains the Senate provision prohibiting the Secretary from issuing any regulation which has the effect of penalizing institutions that are required by state law to provide student financial assistance from their own funds, yet are not free to select the recipients of such assistance. The substitute further provides a declining institutional hold-harmless related to increased availability of appropriations for the program.

53. The Senate amendment, but not the House bill, provides that funds received from first-year and subsequent year appropriations need not be segregated by the institutions for first-year and subsequent year students.

The House recedes.

54. Current law (which the Senate amendment extends) contains a separate authorization of appropriations of $50 million for initial SSIG grants and such sums as may be necessary for subsequent SSIG grants. The House bill eliminates this separate authorization and provides a single authorization of appropriations of $100 million for fiscal year 1981 and fiscal year 1982, $150 million for fiscal year 1983, $200 million for fiscal 1984, and $250 million for fiscal year 1985.

The Senate recedes.

55. Current law (which the House bill extends) provides for the allocation of SSIG funds on the basis of the number of students in attendance at institutions of higher education in a State. The Senate amendment, but not the House bill, (1) provides that the amount allotted to any State shall not be less than the amount alotted to that State for fiscal year 1979; (2) provides that any amount appropriated in excess of the amount appropriated for fiscal year 1979 shall be allotted as follows: (A) 90 percent of such excess shall be allotted on the basis of the number of students in attendance at the institution of higher education in a State: and (B) 10 percent of such excess shall be allotted on the basis of the need-based student aid for students in attendance at institutions of higher education in a State.

The House recedes on (1) and the Senate recedes on (2).

56. The House bill, but not the Senate amendment, revises the allocation formula for SSIG funds to treat differently States which are "overmatched" and States which are "undermatched". The State allotment formula is modified with respect to the distribution of funds in excess of the current appropriation level, $76.75 million. Of the excess funds, States whose State grant effort is less than their eligibility for Federal SSIG dollars will initially be eligible for 20 percent more of the funds than they would otherwise be under the current law. The remaining funds will then be made available to the States whose State grant effort is equal to or greater than Federal SSIG dollars received.

If the undermatched States do not increase their grant effort sufficiently to capture the additional dollars offered, the funds will then first be offered to other undermatched States and then reallotted to the overmatched States.

The House recedes.

57. The House bill, but not the Senate amendment, requires any State desiring to receive SSIG funds to have an agreement under section 1203 (as amended by the House bill).

The Senate recedes.

58. The House bill, but not the Senate amendment, eliminates the requirement that SSIG recipients be undergraduate students.

The Senate recedes.

59. The Senate amendment, but not the House bill, provides that funds received from first-year and subsequent year appropriations need not be segregated by the institutions for first-year and subsequent year students.

The Senate amendment also specifically provides that, with the approval of the State agency, institutions of higher education may use any proportion of their SSIG funds for less-than half-time students.

The Senate recedes on the first paragraph and the House recedes on the second paragraph.

60. The House bill, but not the Senate amendment, provides that all States will be required to maintain their State grant effort at the level of their average aggregate level of the previous three fiscal years or at the level of their average level per full-time equivalent (FTE) student for the previous three fiscal years. The undermatched States will also receive new Federal matching funds only on the basis of State grant expenditures in excess of those for the previous year.

The conference substitute provides that all states will be required to maintain their state grant effort at the level of the average aggregate level of the previous three fiscal years or at the level of their average level per full-time equivalent student for the previous years.

61. The Senate amendment, but not the House bill, authorizes the Secretary to make grants to and contracts with public agencies and organizations.

The House recedes.

62. The Senate amendment, but not the House bill, requires the Secretary to consider the prior experience of applicants for TRIO funds.

The House recedes. The conferees express their strong dissatisfaction with the way that the TRIO programs were administered during the past year. Many institutions were not notified of the decisions of the Department until mid-August, thus causing severe disruptions in their programs and in their services to students. The conferees are also distressed by the discourteous treatment of applicants by the program administrators. The conferees admonish the new Department of Education to remedy these glaring defects in its performance with respect to these programs.

63. The House bill, but not the Senate amendment, requires the Secretary to determine that each participant in a Talent Search Project has a need for academic support in order to successfully pursue education beyond the high school.

The House recedes.

64. The House bill, but not the Senate amendment, requires that the Secretary determine that each participant in an Educational Opportunity Center project has a need for academic support in order to successfully pursue education beyond the high school.

The House recedes.

65. The Senate amendment, but not the House bill, provides statutory authority for the HEP/CAMP programs under the Higher Education Act of 1965.

The House recedes.

66. The Senate amendment, but not the House bill, repeals Section 419 of the Act (relating to payments to institutions of higher education).

The Senate recedes.

67. The Senate amendment, but not the House bill, deletes the provisions of current law providing for the continuing eligibility of institutions for VCI funds despite declining enrollment of veterans.

The House recedes.

68. The Senate amendment, but not the House bill, authorizes the Secretary to waive the minimum veteran enrollment requirements for previously eligible institutions if the institution has a full time veterans affairs office and the appropriations for VCI exceed $14,380,000, or the amount requested in the President's Budget, whichever is greater, by an amount sufficient to meet payments to all institutions meeting such requirements.

The House recedes.

69. The House bill authorizes payments with respect to veterans who are disabled or incarcerated (in accordance with regulations prescribed by the Secretary of Education). The Senate amendment authorizes payments with respect to veterans who have a service-connected disability.

The Senate recedes with an amendment to give service-connected disability priority over non-service connected disability. The amendment further removes the term incarcerated from the list of eligible veterans for whom an institution receives payments.

70. The Senate amendment, but not the House bill, eliminates the requirements that applicants include programs designed to prepare educationally disadvantaged veterans for postsecondary education under Subchapter VI of Chapter 34, Title 38, United States Code, relating to predischarge education programs.

The Senate recedes.

71. The House bill requires active outreach with special emphasis for handicapped veterans. The Senate amendment requires active outreach with special emphasis for service-connected disabled veterans.

The Conference substitute requires that both special emphasis provisions be included.

72. The Senate amendment, but not the House bill, requires that applicants make maximum use for outreach services of benefits available under Federally assisted work-study programs.

The Senate recedes.

73. The House bill, but not the Senate amendment, requires that coordinated readjustment counseling programs be necessary to serve the unique readjustment, rehabilitation, personal counseling, and employment needs of veterans.

The Senate recedes with an amendment requiring that there be coordination among the programs providing readjustment counseling for veterans.

74. The Senate amendment, but not the House bill permits the Secretary to allow consortia agreements for any institution which cannot feasibly itself, in terms of the number of veterans in attendance there, carry out any or all of the programs required.

The House recedes.

75. The House bill reduces the maximum VCI payment to any institution or branch from $135,000 to $100,000. The Senate amendment reduces this amount to $75,000.

The House recedes.

76. The House bill, but not the Senate amendment, increases the maximum total amount an undergraduate dependent student may borrow under the federally-insured loan program from $7,500 to $12,500.

The Senate recedes.

77. The Senate amendment, but not the House bill, contains a conforming amendment to increase the aggregate loan limitations applicable to Guaranteed Student Loans consistently with those increases made with respect to federally-insured student loans.

The House recedes.

78. The House bill, but not the Senate amendment, increases the maximum amount required to be insured, under the supplemental guarantee agreement provisions, for undergraduate dependent students from $7,500 to $12,500.

The Senate recedes.

79. The Senate amendment, but not the House bill, permits State guarantee agencies and other non-profit organizations operating State loan programs to be eligible to receive from the Student Loan Marketing Association up to 25 percent of the average unpaid principal balance of loans guaranteed by that agency for the preceding three years, in order to make loans to eligible students who were otherwise unable to borrow money under Part B of Title IV.

The House recedes with an amendment clarifying the relationship between state agencies and the Student Loan Marketing Association.

80. The Senate amendment, but not the House bill, increases the interest rate to student borrowers under Part B of Title IV from 7 percent to 9 percent.

The House recedes with an amendment increasing the interest rate to 8 percent for new borrowers.

81. The Senate amendment, but not the House bill, reduces the grace period (following periods of attendance) from 9–12 months to four months.

The House recedes with an amendment reducing the grace period to six months for new borrowers.

82. The Senate amendment, but not the House bill, exempts from the prior notice requirement of disclosure to credit bureau organizations, disclosures made to obtain the borrower's location.

The House recedes.

83. The Senate amendment, but not the House bill, provides that information disclosed by the Secretary to credit bureau organizations is not subject to the Privacy Act of 1974 and provides that credit bureau

organizations which enter into agreements with the Secretary shall not be considered government contractors within the meaning of that Act.

The House recedes.

84. The Senate amendment authorizes States to charge ar insurance premium of not to exceed 1 percent per year of the amount of the loan to defray the cost of their insurance and administrative, spending, and overhead costs. The House bill retains current law which provides that States may not charge an excessive insurance premium.

The Senate recedes withan amendment providing that the Commission on Student Financial Assistance which is authorized by Section 491 of this Title shall study the entire issue of inurance premiums and report to the Congress within one year of its establishment on the results of that study. The amendment further provides that the proceeds of the insurance premiums will not be used for incentive payments to lenders. The conferees wish to emphasize that the term "not excessive" should not be interpreted to result in an insurance premium that is more than States are currently permitted to charge. Furthermore, the conferees believe that, in determining the amount of an insurance premium that is to be charged, the reserves of States and the effects of insurance premiums on student borrowers should be taken into account.

85. The Senate amendment, but not the House bill, vests responsibility in the State guaranty agency to ascertain whether the student borrower is enrolled on at least a half-time basis, to notify the lender when a student ceases to be so enrolled (thereby triggering the timing of the repayment period), to audit the note to determine that its provisions with regard to the amount of principal guaranteed match with agency records, and to examine the note to assure that its repayment provisions are consistent with the requirement of the law. The Senate amendment allows expenses in the performance of this function to be treated as allowable administrative costs.

The House recedes.

86. The House bill, but not the Senate amendment, repeals provisions in current law requiring specific percentages of administrative costs allowances to be expended for specified purposes.

The Senate recedes.

87. The Senate amendment, but not the House bill, expands the definition of allowable administrative costs of promotion of commercial lender participation to include costs of providing interest and special allowance computation and billing services to lenders and expenses by an insurer as incentive payments to lenders to induce them to improve or expand their program participation.

The House recedes. The Conferees wish to emphasize that in their opinion, these types of activities have been allowable since October 12, 1976. The Conferees further wish to emphasize that, since the administrative cost allowance can cover the expenses attributable to lender incentive payments, no insurance premiums shall be used to pay for these lender incentive fees.

88. The Senate amendment, but not the House bill, authorizes guarantee agencies, for the purpose of making multiple disbursements of loans to students, to act as escrow agents for lenders under specific terms of an agreement between the lender and the guarantee agency.

The House recedes.

89. The Senate amendment, but not the House bill, contains a provision requiring eligible lenders to provide thorough and accurate loan counseling to student borrowers.

The House recedes with an amendment changing counseling to information throughout this provision.

90. The Senate amendment, but not the House bill, deems parents to be student borrowers for the purpose of construing the various provisions of Part B of Title IV.

The House recedes.

91. The House bill provides that, with respect to parent borrowers who elect to commence installments more than 60 days after disbursement of a loan, interest which would accrue within such interval is to be deducted from the loan prior to disbursement. The Senate amendment provides, with respect to parent borrowers who make such an election to defer payment, that interest on the loan shall be at a rate of 14 percent, which shall accrue during the deferral period.

The House recedes with an amendment providing that the interest rate shall be 11 percent.

92. The House bill provides, with respect to parent borrowers who elect to begin installment payments not later than 60 days after the date of disbursement of a loan, that the interest rate on the loan shall be 7 percent. The Senate amendment provides that the interest rate on loans to borrowers who make such an election shall be 9 percent.

The House recedes with an amendment providing an interest rate of 8 percent.

93. The Senate amendment, but not the House bill, revises the special allowance provisions to adjust those allowances in the case of new loans on which borrowers would be required to pay a 9 percent interest rate or a 14 percent interest rate (in the case of parent borrowers electing to defer payment).

The House recedes with an amendment revising the special allowance in light of the 8 percent or 11 percent interest rate to be paid by parents.

94. The Senate amendment, but not the House bill, revises the special allowance provisions to reduce by one-half (but to a rate not less than .5 percent per year) the special allowance payable with respect to loans made or purchased with funds obtained by the holder from the issuance of tax exempt bonds.

The House recedes with an amendment that the revised special allowance shall apply only to loans made or purchased from the proceeds of tax exempt bonds issued after October 1, 1980.

The amendment further provides that such special allowance shall not be less than 2.5 percent in the case of loans having an interest rate of 7 percent or 1.5 percent in the case of loans having an interest rate of 8 percent.

95. The House bill repeals provisions establishing a Committee on the Process of Determining Student Loan Special Allowances. The Senate amendment revises these provisions and provides that the Committee is to prepare and submit, within one year, recommendations for improvements in the computation of special allowances which the Congress may, by joint resolution, approve in whole or in part.

The Senate recedes with an amendment incorporating the special allowance study within the National Commission on Student Financial Assistance authorized by Section 491 of this Title. The Commission shall report to the Congress within one year after its establishment on the results of this special study.

96. The Senate amendment, but not the House bill, requires holders of loans which were made or purchased with funds obtained from tax-exempt bonds, as a condition of receiving special allowance payments on such loans, to submit to the Secretary for approval a plan for doing business.

The House recedes with an amendment requiring that the Secretary approve or disapprove such plan within 30 days.

97. The House bill, but not the Senate amendment, authorizes appropriations for the purpose of repaying certain amounts (based on years of qualifying service) of loans to borrowers under Part B or E of Title IV who serve as enlisted members of the Armed Forces reserves or serve on active duty as enlisted members of the Armed Forces. The House provisions require the Secretary of Defense to prescribe by regulation for the allocation of funds, in the event that appropriations are not sufficient to make all eligible payments, among various services and military occupational specialties.

The House recedes.

98. The House bill eliminates the authority of the Secretary to prescribe the maximum number of shares of common stock the SLMA may issue, but retains the authority of the Secretary to prescribe regulations governing transferability of such stock. The Senate amendment makes both the maximum number and the transferability of common stock subject to control by the board of directors of the SLMA.

The House recedes.

99. The Senate amendment provides that proceeds from any warehousing advance made to a lender which is secured by collateral (whether insured loans or other securities) must be invested in additional insured loans. The House bill provides that the proceeds of advances secured by insured loans must be invested in additional insured loans, or the lender must make assurances to the SLMA that its aggregate insured loans have not decreased.

The Senate recedes.

100. Current law requires lenders receiving advances from the SLMA not to condition receipt of a loan by a student or his family on maintaining a business relationship with a lender. Lenders with less than $50 million in deposits are exempt from this requirement. The House bill, but not the Senate amendment, raises this amount to $100 million.

The Senate recedes with an amendment changing the limit to $75,000,000.

101. The Senate amendment, but not the House bill, limits the authority of the Secretary to approve new SLMA bonds to those bonds guaranteed by the Secretary.

The House recedes.

102. Both the House bill and the Senate amendment extend the authority of the Secretary to guarantee SLMA bonds. The House bill

extends this authority to October 1, 1984, and the Senate amendment extends this authority to July 1, 1984.

The Senate recedes.

103. The Senate amendment, but not the House bill, prohibits the Secretary of Education and the Secretary of Treasury from limiting, controlling, or constraining programs of the SLMA.

The House recedes.

104. The House bill authorizes the SLMA to issue bonds secured by student loans to the Federal Financing Bank. The Senate bill does not restrict the sales to the Federal Financing Bank.

The Senate recedes.

105. Both the House bill and the Senate amendment authorizes the SLMA to make loans to borrowers under Title IV for the purpose of consolidating that borrower's loans. In addition, the Senate amendment authorizes consolidation of federally insured or guaranteed student loans under other provisions of law. With respect to consolidation loans made by the SLMA, the Senate amendment also waives the maximum insured principal amount for all insured loans made to a borrower.

The House recedes.

106. [Note: See note 79 pertaining to State agencies as "lenders of last resort."]

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

107. Both the House bill and the Senate amendment authorizes the SLMA to make loans in States in which a substantial portion of eligible borrowers are seeking and are unable to obtain loans under Part B of Title IV. In addition, the Senate amendment provides that the SLMA shall give preference to making loans in States not served by a guarantee agency or a State direct lender.

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

108. The House bill requires the Secretary to consult with representatives of a State (including representatives of guarantee agencies) prior to authorizing the SLMA to make lender-of-last-resort loans. The Senate amendment requires the Secretary to consult with representatives of guarantee agencies or direct State lenders prior to authorizing such loans.

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

109. The Senate amendment, but not the House bill, requires the Secretary's consent to the termination of SLMA loans in States given preference by reason of the lack of a guarantee agency or State lender.

The House recedes with an amendment clarifying the relationship between State agencies and the Student Loan Marketing Association.

110. The House bill, but not the Senate amendment, provides that the SLMA, in making student loans, shall not be deemed to be a creditor for any purpose of the Consumer Credit Protection Act.

The House recedes.

111. The House bill, but not the Senate amendment, provides that the Truth in Lending Act shall not apply to any loans made under Title IV of the Act.

The House recedes.

112. The Senate amendment, but not the House bill, authorizes guarantee agencies, upon the request of a borrower who has received loans from two or more programs or lenders, to issue new loans to consolidate those prior obligations, under certain circumstances.

The Senate recedes with an amendment authorizing the Student Loan Marketing Association to contract with a variety of entities to act as the Association's agents for the purpose of loan consolidation.

113. The Senate amendment, but not the House bill, requires the Secretary to make due diligence determinations within 90 days after notification by the insurance beneficiary and to make prompt payment pending completion of such determination.

The House recedes.

114. The Senate amendment, but not the House bill, establishes a four-month grace period prior to resuming repayment following completion of public services qualifying for deferral of repayment.

The House recedes with an amendment establishing the grace period at six months.

115. The Senate amendment, but not the House bill, contains provisions requiring repayment, in installments, to the United States of certain interest subsidies unless the borrower: (A) has exhausted the abiliity to obtain NDSL loans, (B) has borrowed more than $7,500, (C) has borrowed from a State acting as a lender of last resort, or (D) has received an interest subsidy for more than three years.

The House recedes with an amendment providing that the National Commission on Student Financial Assistance shall conduct a special one-year study of the recapture of interest subsidies.

116. The Senate amendment permits administrative cost payments with respect to parent loans (as well as with respect to student loans). The Senate amendment further provides that such administrative cost payments be used by the institution first for the purpose of carrying out student information requirements.

The Conference substitute permits administrative cost payments for parent loans as well as student loans.

117. The House bill, but not the Senate amendment, authorizes appropriations for the purpose of making payments in amounts not to exceed .5 percent of the principal amount of loans to guarantee agencies which rovide a lender referral service for students unable to find an available lender.

The Senate recedes.

118. The House bill, but not the Senate amendment, deletes from the statement of purpose for the Work-Study Program special emphasis on students who are in great financial need.

The Senate recedes.

119. The Senate amendment extends the authorization for work-study for fiscal year 1983 through fiscal year 1985 at the level provided for fiscal year 1982 ($720 million). The House bill provides an increasing authorization from $670 million for fiscal year 1981 up to $990 million for fiscal year 1985.

The conference stubstitute provides the following authorizations:

Fiscal year:	*Millions*
1981	$670
1982	720
1983	760
1984	800
1985	830

120. The House bill, but not the Senate amendment, reduces the amount reserved for the Territories from 2 percent to 1 percent, treats Puerto Rico as a State rather than as a Territory, and extends the availability of realloted funds for an additional fiscal year.

The Senate recedes.

121. The Senate amendment, but not the House bill, provides that any funds not used in any annual cycle in the Work-Study Program be reallotted by setting aside 75 percent of the reallotted amount for eligible institutions to use for initiating, expanding, and improving cooperative education programs. Such reallotment is required to be based upon the number of students assisted under the cooperative education program enrolled in eligible institutions.

The House recedes with an amendment changing the set-aside to 50 percent. The Conferees wish to emphasize that this assistance is not intended to be used for general program assistance but for the purposes of cooperative education in accordance with Title VIII of this Act.

122. The House bill, but not the Senate amendment, deletes the definition of eligible institution from Part C of Title IV.

The Senate recedes.

123. The House bill, but not the Senate amendment, deletes requirements from Part C requiring Work-Study recipients to be enrolled on at least a half-time basis, show need for assistance and show evidence of academic or creative promise, and substitutes, in Part F, the general requirement that the students be eligible and in financial need.

The Senate recedes.

124. The House bill, but not the Senate amendment, deletes from current law requirements that institutions make employment under Work-Study reasonably available to all eligible students in need, and make equivalent employment offered or arranged by the institution reasonably available to all students who desire such employment.

The House recedes.

125. The House bill, but not the Senate amendment, deletes all provisions of current law imposing special conditions with respect to student eligibility in area vocational schools.

The Senate recedes.

126. The House bill, but not the Senate amendment, authorizes the institution in which the student is enrolled to determine the amount of the student's Work-Study award allocable to non-education related living expenses.

The House recedes.

127. The Senate amendment, but not the House bill, authorizes each eligible institution to use no more than 10 percent of its Work-Study funds for less than half-time students.

The House recedes with an amendment clarifying that less than half-time students have to meet all the eligibility requirements of Section 484 of this Title except the requirement of clause two of Section 484.

128. The Senate amendment, but not the House bill, provides that Work-Study funds will be used to complement and reinforce the education programs of a percentage of students increasing from 10 percent in fiscal year 1981 to 30 percent in fiscal year 1985.

The House recedes with an amendment requiring that institutions shall provide employment that, to the maximum extent practicable, complements and reinforces the educational program or vocational goal of each student receiving assistance under this part.

129. The Senate amendment, but not the House bill, provides that criteria established to allocate funds shall not result in any institution receiving less than it used for Work-Study for fiscal year 1979, unless there has been a substantial decline in enrollment.

The House recedes.

Due to some problems encountered by local institutions of higher education in receiving an adequate share of funds under the so-called "fair share" formula devised by the Department of Education for the distribution of campus-based program funds, the conferees have adopted the provision contained in the Senate amendment holding all institutions harmless to the level of Work-Study funds they used in fiscal year 1979. In taking this action, the conferees urge the Department of Education to review that formula so that all institutions are not being held to the same national standards. For instance, some institutions, such as Berea College, wish to emphasize Work-Study programs more than grant or loan programs. Any formula for the distribution for all these funds should respect such local decisions.

130. The House bill permits an eligible institution to carry over 10 percent of its Work-Study funds for the succeeding fiscal year, or to carry back 10 percent to the previous fiscal year, to carry out programs under this part. The Senate amendment permits an eligible institution to carry over or carry back 7.5 percent, but provides that prior to carrying over or carrying back such funds, compliance must be obtained with the requirements for reallocation for cooperative education.

The Senate recedes.

131. The Senate amendments, but not the House bill, permits institutions of higher education to use 10 percent of their administrative allowance for Work-Study to establish community service learning programs in which students are provided service-oriented jobs relating to their academic or vocational goals, and which provide tangible community service for or on behalf of low income individuals and families.

The House recedes.

132. The Senate amendment, but not the House bill, establishes a new nonprofit agency in the Executive Branch of the Federal Government, the National Direct Student Loan Association. This Association will be responsible for administration of an expanded program of need-based loans available to students on-campus through their institution's financial aid office.

The Association's Board of Directors shall consist of the Secretary of Education and eight other members appointed by the President, subject to the advice and consent of the Senate.

In administering the National Direct Student Loan Program, the Association shall provide, either directly or by way of contract or other arrangement with State guaranty agencies or other appropriate agencies, organizations, and institutions for collection of Direct student loans, programs of preclaims assistance for default prevention. and other programs which the Board of Directors deems necessary to assure the success of the program. State guaranty agencies shall be offered the first right of refusal to carry out these activities in their respective States.

The Association will be authorized to enter into agreements with students for prepayment of loans made under the existing National Direct Student Loan Program. Since it will have the responsibility for collection of outstanding loans made under current law, it may receive information regarding student borrowers from the Secretary and, pursuant to agreements with institutions regarding collection, make such information available to them.

The Association is authorized to issue notes, debentures, bonds, or other obligations necessary to make loan capital available to institutions for their needy students. However, all such obligations are specifically limited by annual limitations in appropriations Acts, which will control the amount of money available to the Association for payment of interest on its obligations. In addition, the Association may not issue any obligation without the prior concurrence of the Secretary of the Treasury as to the obligation's terms and conditions. The Secretary of the Treasury may direct that any issuance by the Association be sold to the Department of the Treasury or to the Federal Financing Bank. The Secretary of the Treasury is authorized to purchase any obligations of the Association, upon such terms and conditions as to yield a rate determined by him, taking into account the current average yield on outstanding obligations of the United States of comparable maturity. Interest owed by the Association may be deferred, in the discretion of the Secretary, but such deferred interest shall bear interest. The Secretary may sell any of the obligations he acquires, upon such terms and conditions as he decides, and at such prices as he determines. All actions of the Secretary shall be treated as public debt transactions of the United States.

All obligations of the Association shall be guaranteed as to principal and interest, and shall constitute general obligations of the United States, backed by the government's full faith and credit. Association funds not otherwise employed may be deposited with the Treasury, with the approval of the Secretary of the Treasury, deposited in a Federal Reserve bank, or with the approval of the Secretary of the Treasury and the Board of Directors, used in the purchase (for redemption and retirement) of the Association's obligations.

The Association shall prepare annually and submit a budget as provided by the Government Corporations Control Act. In addition, it shall maintain an integral set of accounts with respect to loans made, which the General Accounting Office shall audit once every three years. The Association shall report annually to the Congress and the President on the general operations of the National Direct Loan Program, including a specific description of the progress made on collection of student loans for which the Association is responsible.

There are authorized to be appropriated such sums as may be necessary to the Association for administrative costs of carrying out the National Direct Student Loan Program, to pay the differential between the rate of return on the Association's obligations and the interest rates collected under the Program, and for the costs of repayment of student loans in the event of default, death, or disability.

Upon the winding down of the current Direct Student Loan Program, institutions shall return to the Association the 90 percent Federal contribution to their student loan funds, retaining the 10 percent institutional contribution on campus. As additional repayments of Direct Loans are made to the Association, that capital shall be available to the Association for the purpose of making new Direct Loans to students. New student notes entered into under the Direct Loan Program shall be assigned to the Association for collections purposes. As noted earlier, institutions with good collection records may apply to the Association to continue as collection agents.

The Senate recedes.

133. The House bill extends the provisions of the direct student loan program under Title IV for six years and increases the level of authorization of appropriations from $400 million for fiscal year 1981 and fiscal year 1982 to $625 million for fiscal year 1985.

The Senate recedes.

134. The Senate amendment, but not the House bill, replaces the existing National Direct Student Loan Program with a new program administered by the National Direct Student Loan Association. The National Direct Student Loan Association is responsible for providing funds to institutions of higher education to enable them to make loans to students with demonstrable financial need. Each institution with an agreement with the Association will analyze the overall financial need of students on its campus, taking into account other financial aid (other than Guaranteed Loans) available to them.

Subject to appropriations available to allow the Association to borrow money from the Federal Financing Bank, the Association will make necessary loan funds available to colleges based on their aggregate need for student loans. It will do so in installments, to avoid unnecessary accumulation of capital at the institutional level, taking into account the institution's actual disbursement of student loans. The first such payment by the Association will be made as soon as possible after October 1, 1980.

The Association's agreement with an institution of higher education shall provide for the establishment and maintenance of a student loan fund at the institution. Payments made to the institution under this part, as well as any other earnings of the funds, shall be deposited into the loan fund. The fund shall be used only for loans to students, based on their need as demonstrated by the uniform needs analysis, costs of administration, distributions of capital, if any, and costs of litigation or collection, if required by the Association.

If the institution wishes to act as a collection agent, it may apply to the Association for that purpose. It will be required to demonstrate that it has a good collection record in the existing Direct Loan Program, in order for the Association to enter into an agreement with the institution. Not to exceed 10 percent of an institution's loan funds may be used for loans to less than half-time students who need assistance, in the direction of the student financial aid administrator.

Direct Student Loans would bear an interest rate of seven percent, beginning nine months after the borrower ceases to carry at least a half-time workload, and ending ten years after that date. Repayments may, at the option of the borrower, be made in graduated installments, with larger payments due later in the repayment period, and with provision for acceleration of repayment of the loan, in whole or in part. The normal minimum repayment shall be $30 per month, unless the Association provides, by regulation, for a lower payment for one year to avoid hardship to the borrower, or unless the borrower is employed in a low-income occupation during the repayment period, in which case the repayment schedule may be adjusted to reflect his income. Repayment obligations are deferred for additional education on more than a half-time basis, for service in the Armed Forces or the Commissioned Corps of the Public Health Service, Peace Corps or VISTA service and related activities.

The Senate amendment eliminates all provisions concerning cancellation of direct Student Loans for various types of public service.

The House recedes with an amendment which retains the current structure of the NDSL program, increases the interest rate to 4 percent, and provides for an alternative financing mechanism through borrowing by the Secretary to meet the student loan capital needs of institutions of higher education through procedure by which existing campus revolving funds revert to the federal goevrnment. The conferees note that the intended hold-harmless level is the amount loaned by a school during the 1979–80 academic year.

135. Both the House bill and the Senate amendment raise the applicable aggregate loan limits of the Direct Loan Program in identical amounts.

There is no difference between the House and the Senate provisions.

136. Both the House bill and the Senate amendment add identical provisions relating to periods which deferment may be made.

There is no difference between the House and the Senate provisions.

137. The Senate amendment, but not the House bill, excludes periods of deferral of repayment from the maximum duration of repayment, and establishes a grace period with respect to such deferral periods (allowing repayment to begin up to nine months after the completion of the deferral period).

The House recedes.

138. The Senate amendment, but not the House bill, allows the repayment period to be extended for an additional ten years for, and the payment schedule to be adjusted to reflect the income of, low-income individuals.

The House recedes.

139. The House bill repeals the definition of a veteran. The Senate amendment retains a comparable provision.

The Senate recedes.

140. The House bill, but not the Senate amendment, authorizes the Secretary to provide institutions with any information with respect to the names and addresses of Direct Student Loan borrowers or other relevant information, from whatever source derived, notwithstanding any other provision of law.

The Senate recedes.

141. The House bill contains provisions authorizing the Secretary to enter into cooperative agreements with credit bureau organizations to provide for the exchange of information concerning Direct Student Loan borrowers, in a manner comparable to the provisions added by both the House bill and the Senate amendment with respect to guaranteed and insured student loans. The Senate amendment contains

comparable authority for the National Direct Student Loan Association for Direct Student Loan borrowers.

The Senate recedes.

142. The House bill, but not the Senate amendment, requires the Secretary to continue to attempt to collect any defaulted student loans for not less than four years.

The Senate recedes.

143. The House bill, but not the Senate amendment, conforms the definition of handicapped children used for determining teacher eligibility for loan cancellation to the definition of handicapped children contained in the Education of Handicapped Children Act. The Senate amendment eliminates all cancellation provisions.

The Senate recedes.

144. The House bill, but not the Senate amendment, provides that cancellation of a Direct Student Loan or the interest thereon shall not be considered as income for purposes of Federal income tax.

The Senate recedes.

145. [See discussion of provisions concerning cancellation for military service in Note 97.]

The House recedes.

146. The Senate amendment, but not the House bill, includes in the definition of institution of higher education accredited institutions of higher education which are not located in a State, but which otherwise meet the requirements of Section 1201(a)(1) through (4).

The House recedes with an amendment mandating the National Commission on Student Financial Assistance to conduct a study of whether institutions chartered by but not located in a state should be eligible institutions under Title IV.

147. The Senate amendment, but not the House bill, requires institutions, as a condition of eligibility for Title IV programs, to be in compliance with certain fiscal responsibility requirements.

The House recedes.

The conferees clarify a minor difference between the Senate and House language regarding the requirement for having an agreement with the Secretary as a condition of program participation by an elegible institution. Section 487 of the Senate amendment is entitled "Institutional Eligibility Agreements." A similar provision, Section 482 of the House bill, is entitled "Institutional Eligibility." The conferees change the title to "Participation Agreements" to clarify the delineation between the determination of the statutory characteristics comprising institutional eligibility and the reciprocal responsibilties in an agreement between the institution and the Secretary as a condition to program participation.

Since the enactment of the Higher Education Act in 1965, an eligible institution has been defined as an institution which has been determined to meet the relevant basic statutory requirements as articulated in § 1201 and other provisions of the Act.

An eligible institution has always been regarded as one which meets the Act's threshold requirements which would therefore make it eligible to apply for program participation or funding under one or more programs authorized by the Act. Not all eligible institutions are eligible for all programs. In adopting this language the conferees intend that the distinction between "eligibility" and "participation" shall continue, and that an eligible institution is not necessarily a participating institution in any one program unless that eligible institution has completed and filed a terms of agreement which has been approved by the Secretary for that particular program.

In adopting this language, the conferees note that the term "eligible institution for he purposes of any progam auhorized under this title" shall be construed as the institution's eligibility to participate in a specific program and that this language is no way impinges upon the original determination of an institution as an "eligible institution."

148. [See discussion relating to Work-Study for Community Service Learning in note 131.]

The House recedes.

149. The House bill, but not the Senate amendment, contains a provision authorizing any prospective student to obtain and review copies of documents describing the institution's accrediation, approval, or licensing.

The Senate recedes.

150. The House bill continues certain provisions of current law relating to student financial aid training, but provides that all authority with respect to such programs terminates September 30, 1986. The Senate amendment authorizes the Secretary to enter into contracts to provide training for financial aid administrators, student peer counselors, and other financial assistance personnel. The House bill authorizes $280,000 and the Senate bill authorizes $1,000,000 for fiscal years 1981–1985.

The House recedes.

151. The House bill requires the publication of expected family contribution schedules not later than July 1 of each calendar year, and the Senate amendment requires this publication not later than April 1 of each calendar year.

The Senate recedes with an amendment providing that such Family Contribution Schedule shall be published no later than July 1, 1981, April 1, 1982, and April 1 of each succeeding calendar year.

152. The Senate amendment, but not the House bill, authorizes a resolution of disapproval with respect to any part of the expected family contribution schedule (or any resubmission of such schedule).

The House recedes.

153. The Senate amendment, but not the House bill, includes any expenses to a handicapped student as part of the basic criteria to be followed in promulgating regulations with respect to the family contribution.

See explanation following note 154.

154. The House bill, but not the Senate amendment, includes reasonable child care expenses of a student as part of the basic criteria to be followed in promulgating regulations with respect to the family contribution.

The Conference substitute provides that these expenses shall be considered in calculating cost of attendance under Subsection d of this Section.

155. Current law, which the House bill extends, defines effective family income as the annual adjusted family income received by the

parents or guardian of a student (or persons having an equivalent relationship to the student) minus Federal income tax payable or paid with respect to that income. The Senate amendment defines effective family income as the annual adjusted family income received by the parents (or the adoptive parents) of the student minus Federal, State, and local taxes payable or paid with respect to such income, and adds any effective student income (after any offset as determined by regulations prescribed by the Secretary).

The House recedes with an amendment striking "adoptive parents" and adding in its place "guardians".

156. In determining expected family contribution, current law provides for an assessment rate of not more than 10.5 percent to be applied to parental discretionary income under the Basic Grant program. The Senate amendment applies this assessment rate for all need computations under Title IV but only to families with adjusted gross family incomes less than $25,000, and authorizes the Secretary to establish an assessment rate or rates to be applied to income in excess of $25,000. The House bill establishes no assessment rate with respect to parental discretionary income.

The House bill, but not the Senate amendment, requires that in determining expected family contribution, parental assets be determined by excluding equity in a principal place of residence, deducting an asset reserve of not less than $10,000, and, if assets include farm or business assets, deducting an additional asset reserve of not less than $50,000.

The House recedes with an amendment changing the assessment rate to not more than 14 percent. The Senate recedes with respect to the treatment of assets. It is the clear and express intent of the conferees that, in considering farm assets, the value of the principal place of residence, even if it is located on the farm, will be excluded in its entirety before taking into consideration the assets reserve of not less than $50,000 for farm assets. The conferees also wish to stress that it is their intention that stock in cooperative apartments be considered an asset in terms of equity in a principal place of residence.

157. The House bill, but not the Senate amendment, requires that regulations concerning the expected family contribution and the effective family income of an independent student provide (A) that the portion of assets exempted from assessment for independent students with families be the same as the portion exempted for families of independent students; (B) that the rate of assessment for such students be the same as the rate for such families; (C) that the portion of the effective family income for independent students without families which shall be exempt from subsistence requirements be computed in the same manner as for dependent students or independent students who have dependents; (D) that in determining the family contribution for independent students with families, the assessment rate on discretionary income shall be the same as that applied to the discretionary income of the family of a dependent student; and (E) that a married student shall be considered independent if the student certifies that he will not reside with parents for more than six weeks, will not be claimed as a dependent on tax returns, and will not receive more than $750 from parents.

The Senate recedes.

158. The House bill defines cost of attendance to include, beginning in academic year 1981–82, an allowance of not less than $600 for books, supplies, and miscellaneous personal expenses. The Senate amendment does not require a minimum of $600 and does not identify an academic year in which such allowance is to begin. In addition, the Senate amendment includes transportation as an element of this allowance.

The House recedes.

159. The House bill provides an allowance of not less than $1,150 for room and board for a student without dependents residing at home. The Senate amendment sets this allowance at not less than $1,100.

The Senate recedes.

160. The Senate amendment, but not the House bill, excludes from the definition of students who are maintaining satisfactory progress those students who, while receiving assistance under Ttile VI, failed to complete successfully at least three-fourths of the academic workload undertaken with such assistance, until the student successfully completes that or an equivalent workload, unless the institution determines that exceptional circumstances exist and that failure to waive these requirements would result in undue hardship to the students.

The Senate recedes. The Conferees intent that the issue raised by the Senate amendment be studied by the National Commission on Student Financial Assistance authorized by Section 491 of this Title and that such study be reported to the Congress within one year of the Commission's establishment.

161. Current law, which the Senate amendment continues, authorizes the Secretary to prescribe such regulations as may be necessary to provide for (A) fiscal audit of institutions with regard to funds obtained directly or indirectly under this title, (B) the establishment of reasonable standards for financial responsibility and administrative capacity of student financial assistance, (C) the establishment by institutions of policies and procedures to inform lenders under Part B of the latest known addresses and enrollment status of student borrowers under that Part, and (D) the limitation, suspension, or termination of eligibility for any program under Title IV of institutions which have violated or failed to carry out any provisions of Title IV or any regulation thereunder. The House bill contains comparable provisions with respect to limitation, suspension, or termination of eligibility.

The House recedes.

162. The Senate amendment, but not the House bill, authorizes the Secretary to suspend or terminate the eligibility of institutions for any or all programs under Title IV if the Secretary determines that the institution has engaged in a substantial misrepresentation of its educational program, its financial charges, or the employability of its graduates.

The House recedes.

163. The Senate amendment, but not the House bill, authorizes the Secretary to impose a civil penalty not to exceed $25,000 upon an institution which violated or failed to carry out provisions of Title IV (or any regulation thereunder) or has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates.

The House recedes with an amendment requiring that any such determination by the Secretary shall be made only after reasonable notice and opportunity for hearing on the record are provided.

164. The Senate amendment, but not the House bill, continues a provision of current law which requires the Secretary to publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education.

The House recedes.

165. The Senate amendment, but not the House bill, requires the Secretary to enter into not less than three contracts for processing students aid applications.

The House recedes.

166. The Senate amendment, but not the House bill, permits the Secretary to contract for educational services to assure coordination of financial aid from Federal and non-Federal sources, and to provide information, training and similar services.

The House recedes.

167. The Senate amendment, but not the House bill, specifically permits appending to or incorporating additional data elements in the general financial aid form.

The Senate recedes. The Conferees wish to point out that they consider "simultaneously collecting" to include "appending to or incorporating into."

168. The Senate amendment, but not the House bill, authorizes the Secretary to develop a system of pre-eligibility assistance to provide students with an early notice of their potential eligibility for financial aid.

The House recedes.

169. The House bill, but not the Senate amendment, establishes a National Commission on Student Financial Assistance. The Commission is composed of 12 members. The President, the Speaker of the House and the President Pro Tem of the Senate each appoint one third of the members. The members appointed by the Speaker will include two members of the House, one from each political party, and likewise the members appointed by the President Pro Tem will include two members of the Senate, one from each political party. The Commission is required to make a final report to the President and the Congress not later than July 1, 1983, and is required to include draft legislative language in its report to accomplish any changes in current law which it recommends.

Among the issues the Commission is charged with analyzing are:

More effective means to reduce default, fraud, abuse and delinquency in the Title IV programs;

The appropriate balance between loans and other forms of student assistance;

The adequacy of student loan capital;

The impact of various forms of student assistance on student career educational choices;

The most appropriate delivery systems for the student loan programs and other forms of student assistance;

The appropriate level of public subsidy for student loans;

The impact of student assistance on educational prices;

The means to remove barriers to loan availability for students caused by patterns of lender discrimination (a concern also noted above in the discussion of the Guaranteed Student Loan program); and

The appropriate role of tax exempt bonds as a mechanism for raising student loan capital and the cost to the Federal Government of the arbitrage derived from such bonds, the proceeds of which are used to make student loans.

An authorization of $10 million is provided for the Commission.

The Senate recedes with an amendment adding additional charges to the Commission as noted throughout this statement.

170. The Senate amendment, but not the House bill, authorizes the Secretary to conduct a comprehensive study of Federally authorized assistance programs on postsecondary educational access and choice of high school students.

The Senate recedes with an amendment providing that this study shall be conducted by the National Commission on Student Financial Assistance authorized under Section 491 of this Title.

171. The House bill, but not the Senate amendment, provides that amendments made by Section 6 of the Middle Income Student Assistance Act shall take effect on July 1, 1972.

The Senate recedes.

TITLE V—TEACHER CORPS AND TEACHER TRAINING PROGRAM

172. The House bill extends the existing authorization of $100,000,000 per fiscal year for the Teacher Corps program through Fiscal Year 1985.

The Senate amendment provides authorization levels for this program as follows:

$43,000,000 for Fiscal Year 1981,
$50,000,000 for Fiscal Year 1982,
$57,500,000 for Fiscal Year 1983,
$66,000,000 for Fiscal Year 1984,
$76,000,000 for Fiscal Year 1985.

The conference substitute authorizes the following amounts:

$45,000,000 for Fiscal Year 1981,
$55,000,000 for Fiscal Year 1982,
$65,000,000 for Fiscal Year 1983,
$75,000,000 for Fiscal Year 1984,
$85,000,000 for Fiscal Year 1985.

173. The House bill extends the existing authorization for Teacher Training programs of $100,000,000 per fiscal year through Fiscal Year 1985.

The Senate amendment establishes authorization levels for these programs as follows:

$16,500,000 for Fiscal Year 1981,
$19,000,000 for Fiscal Year 1982,
$22,000,000 for Fiscal Year 1983,
$25,000,000 for Fiscal Year 1984,
$28,000,000 for Fiscal Year 1985.

The conference substitute provides for the following authorizations:
$20,000,000 for Fiscal Year 1981,
$30,000,000 for Fiscal Year 1982,
$40,000,000 for Fiscal Year 1983,
$50,000,000 for Fiscal Year 1984,
$55,000,000 for Fiscal Year 1985.

174. The House bill, but not the Senate amendment, with respect to the Teacher Corps program removes Puerto Rico from the list of Territories and treats it like a state. It also lowers from 5 to 2% the number of Teacher Corps members to be allocated to the Territories.

The Senate recedes.

175. The House bill, but not the Senate amendment, removes the teacher intern compensation limitation of $150.00 per week plus $15.00 per week for each dependent.

The Senate recedes.

176. The House bill, but not the Senate amendment, adds a new authorized activity for the Teacher Corps Program by permitting grants to schools, colleges, and departments of education, and local education agencies with high concentrations of low income students for programs in biological, natural, earth, and physical sciences and mathematics.

The Senate recedes.

177. The House bill requires that the Secretary seek to provide an equitable geographic distribution of Teacher Center Grants when the appropriation is less than $50,000,000.

The Senate amendment requires each State to receive a Teacher Center Grant regardless of the appropriation.

The House recedes.

178. The House bill, but not the Senate amendment, permits educational service agencies to receive Teacher Center Grants.

The Senate recedes. The conferees note that the term "educational service agency" refers to an intermediate school district, county school district or board of cooperative education services, officially recognized by a state, which performs administrative or service functions for local educational agencies, including but not limited to handicapped education programs, inservice and preservice training, computer services and curriculum development.

179. The House bill, but not the Senate amendment, expands the definition of Teacher Centers to require that any site operated by a local educational agency must collaborate with one or more institutions of higher education which serves teachers.

The Senate recedes with an amendment to encourage, but not require, teacher centers to collaborate with institutions of higher education.

180. The House bill, but not the Senate amendment, includes the use of technology and telecommunications as a permissible activity of the Teacher Center.

The Senate recedes.

181. The House bill, but not the Senate amendment, adds bilingual education teachers as members of the Teacher Center Policy Board.

The Senate recedes with an amendment adding such teachers where appropriate.

182. The House bill, but not the Senate amendment, adds institutions of higher education as eligible Teacher Center Grant recipients.

The House recedes. The Conferees, although not requiring that institutions of higher education be added as eligible Teacher Center Grant recipients, wish to encourage collaboration between higher education institutions and eligible recipients in such Teacher Center grants.

183. See previous note.

The House recedes.

184. See note number 179.

The House recedes with an amendment to encourage, but not require, Teacher Centers to collaborate with institutions of higher education.

185. The House bill rewrites section 533 to provide for grants to schools of education for development of model in-service education projects and support activities for elementary and secondary school teachers. It also provides for grants for achieving diversification and redirecting education programs, retraining faculty members in new educational programs, training faculty for projects in conjunction with the Comprehensive Employment and Training Act, and training educational personnel to specialize in the implementation of urban and environmental policies.

The Senate amendment retains the existing law authority for training for higher education personnel.

The Senate recedes with an amendment which would provide assistance for pre-service instead of in-service activities focused on preparing elementary or secondary school teachers and striking associations as eligible recipients.

186. The House bill, but not the Senate amendment, establishes an Office of Education Professional Development in the Department of Education to review professional development operations and to coordinate their activities among the various Federal education programs.

The Senate recedes. The Conferees suggest that the appropriate location for such an office is in the Office of the Assistant Secretary for Educational Research and Improvement.

187. The Senate amendment, but not the House bill, authorizes a new program of training for elementary and secondary school teachers to teach handicapped children in areas where there is a shortage of such teachers. This training program is in the nature of fellowships to individual teachers who must within 5 years after completion of training teach for at least 2 years in a special education program or repay the stipend awarded to the individual.

The Senate amendment establishes the following authorization levels for this new program:

$2,000,000 For Fiscal Year 1981,
$3,000,000 For Fiscal Year 1982;
$5,000,000 For Fiscal Years 1983 through 1985.

The House recedes.

TITLE VI—INTERNATIONAL EDUCATION PROGRAMS

188. The Senate amendment, but not the House bill, authorizes grants and contracts with combinations of institutions of higher education and requires that centers and programs funded by the Secretary would be national resources for teaching of foreign languages and instruction in related fields.

The House recedes. The Conferees intend that the Section 602 National Research Centers be selected on the basis of excellence and that such centers contribute to the national interest by conducting advanced research and training. The Conferees also intend that the eligibility of four-year institutions under Section 602 be limited to programs of national import deemed exemplary for the nation in terms of excellence and innovation.

189. The House bill allows grants or contracts to cover the cost of faculty, staff and student travel in foreign areas, regions or countries and the cost of travel of foreign scholars to teach or conduct research.

The Senate amendment allows grants or contracts to cover the cost of teaching and research materials, the cost of curriculum planning and development, the cost of visiting scholars and faculty to the Center to teach or conduct research or the cost of training and employment of the staff.

The Conference substitute combines these provisions and activities.

190. The Senate amendment, but not the House bill, authorizes the Secretary to make grants to centers having important library collections for the maintenance of such collections.

The House recedes.

191. The Senate amendment, but not the House bill, authorizes the operation of undergraduate centers to serve as regional resources, in addition to providing training to students enrolled at the institution in which the Center is located. Such regional resource centers offer programs to strengthen international studies in foreign languages in the colleges in the region served by such Center.

The House bill limits support to graduate centers which would be national and international resources for research and training.

The House recedes. The Conferees stress that these centers should become effective regional resources, in part, through national outreach to other colleges, local education agencies and the community. Section 603 centers may apply to become Section 602 centers.

192. The Senate amendment, but not the House bill, includes, as authorized activities under graduate instruction programs, programs designed to integrate undergraduate education with terminal masters degree programs having an international emphasis and the development of an international dimension in teacher training.

The House recedes. The Conferees stress that it is the purpose of the Section 604 International Studies Program to encourage diversity and stimulate the growth of foreign language and international studies throughout the spectrum of higher education.

193. The Seante amendment, but not the House bill, moves the Grant Program to Promote Cultural Understanding to Title III of the Elementary and Secondary Education Act as a new Part N of the Special Projects Act.

The House recedes. The conferees intend that this program will continue to be administered by the Office of International Education located under the Assistant Secretary for Postsecondary Education.

194. The Senate amendment, but not the House bill, allows financial assistance under this Part to be used for the development of materials to link language learning to international studies.

The House recedes.

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195. The House bill provides that funds may be used by local educational agencies to introduce instruction in foreign languages not offered by their schools in the three academic years preceding the year in which the grant is made.

The Senate amendment provides that funds may be used by local education agencies to introduce instruction in foreign languages designated by the Secretary as having critical importance to the Nation.

The Conference substitute merges the two provisions. Grants may be made only for foreign language instruction designated by the Secretary as having critical importance to the Nation and not offered by the school in the three preceding academic years.

196. The Senate amendment, but not the House bill, contains a separate authorization of appropriations for the Cultural and International Understanding program.

The House recedes.

197. The Senate amendment, but not the House bill, provides that excellence be the criterion for selection of grants awarded under the graduate and undergraduate language and area center program. With respect to other programs under this Title, the Senate amendment requires that the Secretary award grants in such a manner as will achieve an equitable distribution of funds throughout the Nation.

The House bill requires that the Secretary shall award grants under this Title in such a manner as will achieve a broad equitable distribution of funds throughout the Nation.

The House recedes. The Conferees wish to stress that excellence should be the criteria with regard to grants for language and area center programs. With respect to other programs under this Title, consistent with the criterion of excellence, grants should be awarded in such a manner that will achieve an equitable distribution of funds.

198. The Senate amendment, but not the House bill, authorizes the Secretary to conduct research on evaluating competency in foreign languages.

The House recedes. The Conferees suggest that the National Institute of Education be the agency to conduct such research.

199. The House bill authorizes the Secretary to prepare and publish an index and analysis of the books and research material produced with the assistance under this title. The Senate amendment authorizes the Secretary to prepare and publish an annual report which shall include such an index and analysis.

The House recedes.

200. Both the House bill and the Senate amendment contain an Advisory Board. The House bill's Advisory Board shall meet not less than four times each year. The Advisory Board in the Senate amendment shall meet not less than three times each year. The House will requires a representative selected by the Director of Central Intelligence, four members representative of postsecondary education and four members of the public. The Senate amendment also includes one member selected by the Secretary of the Treasury, one member selected by the Secretary of Education to serve as Chairman and coordinator of the activities, one member selected by the Chairman of the National Endowment for the Humanities, one member selected by the Director of the International Development Corporation Agency, one member

selected by the Chairman of the Export-Import Bank, one member selected by the Administrator of the Small Business Administration, five members from postsecondary education, three members from the public and three representatives of the business community.

The House recedes with an amendment requiring that the Board meet at least four times a year.

201. The Advisory Board under the House bill shall advise the Secretary on areas of special need, areas which duplicate other programs and changes which should be made in the operation of the law.

The Senate amendment requires the establishment of two subcommittees. One subcommittee shall consider grants and contracts made under Part A of Title VI and under Title III of the Elementary and Secondary Education Act and shall advise the Secretary of geographic areas of special need or of concern to the United States, specific foreign languages to be designated as critical under Title III of the Elementary and Secondary Education Act, other innovative approaches to international education, activities which would duplicate other Federal programs, changes necessary in program operations, and administrative and staff requirements of international education programs in the department.

The House recedes.

202. The Senate amendment provides that the second subcommittee shall review the business and international education programs and advise the Secretary, who shall seek the advice of the Secretary of Commerce.

The House recedes.

203. The House bill authorizes $100,000,000 for Fiscal Year 1981; $105,000,000 for Fiscal Year 1982; $110,000,000 for Fiscal Year 1983; $115,000,000 for Fiscal Year 1984; and $120,000,000 for Fiscal Year 1985, except that no funds shall be available for carrying out the grant program to promote cultural understanding unless $16,000,000 is made available for carrying out the rest of Title VI.

The Senate amendment authorizes $34,500,000 for Fiscal Year 1981; $40,000,000 for Fiscal Year 1982; $46,000,000 for Fiscal Year 1983; $53,000,000 for Fiscal Year 1984; and $61,000,000 for Fiscal Year 1985 for the purposes of Title VI. The Senate amendment provides a separate authorization for the Cultural Understanding Program.

The conference substitute provides the following authorizations:

$45,000,000 for Fiscal Year 1981,
$55,000,000 for Fiscal Year 1982,
$70,000,000 for Fiscal Year 1983,
$80,000,000 for Fiscal Year 1984,
$85,000,000 for Fiscal Year 1985.

204. The Senate amendment, but not the House bill, authorizes a new Part B—Business and International Education Programs. This new Part establishes a dollar for dollar matching grant program to postsecondary institutions which have entered into agreements with business enterprises, trade organizations or consortia of such organizations to establish or expand curricula to serve the international needs of the American business community.

The Senate amendment authorizes an annual appropriation of $7,500,000 for Fiscal Year 1981 through 1985 for the purposes of this new Part.

The House recedes.

TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

205. The Senate amendment, but not the House bill, expands the purpose of this Title to emphasize a priority in the use of coal, solar, and renewable resources.

The House recedes.

206. The Senate amendment, but not the House bill, allows institutions to use funds awarded under this Title to detect, remove, or otherwise contain asbestos hazards in their facilities used by students.

The House recedes.

207. The House bill establishes an authorization level of $300,000,000 for each Fiscal Year ending prior to October 1, 1985, for Part A of Title VII.

The Senate amendment authorizes the following authorization levels for the same Part:

$30,000,000 for Fiscal Year 1981,
$35,000,000 for Fiscal Year 1982,
$40,000,000 for Fiscal Year 1983,
$45,000,000 for Fiscal Year 1984,
$55,000,000 for Fiscal Year 1985.

The House bill authorizes an $80,000,000 appropriation for each Fiscal Year ending prior to October 1, 1985, for Part B.

The Senate amendment authorizes the following appropriation levels for the same Part:

$5,000,000 for Fiscal Year 1981,
$10,000,000 for Fiscal Year 1982,
$15,000,000 for Fiscal Year 1983,
$20,000,000 for Fiscal Year 1984,
$25,000,000 for Fiscal Year 1985.

The House bill establishes an authorization level of $200,000,000 for each fiscal year ending prior to October 1, 1985, for Part C.

The Senate amendment establishes a $50,000,000 authorization level for the same period of time for the same Part.

The conference substitute provides the following authorizations for Part A:

$140,000,000 for Fiscal Year 1981,
$140,000,000 for Fiscal Year 1982,
$145,000,000 for Fiscal Year 1983,
$150,000,000 for Fiscal Year 1984,
$155,000,000 for Fiscal Year 1985.

The substitute provides an authorization of $80 million per year for Part B.

The substitute authorizes $110 million per year for Part C.

208. The Senate amendment, but not the House bill, authorizes a procedure by which a State which does not wish to enter into an agreement pursuant to section 1203 may participate in Title VII programs.

The Senate recedes.

209. The House bill provides that grants for the construction, reconstruction and renovation of graduate academic facilities shall not exceed 50 percent of the cost of the project.

The Senate amendment provides that such grants shall not exceed 75 percent of the cost of the project.

The Senate recedes.

210. The House bill contains the interest rate at 3 percent per year. The Senate amendment increases the interest rate to 7 percent.

The Senate recedes with an amendment increasing the interest rate to 4 percent.

211. The Senate amendment, but not the House bill, provides for recovery of payments on buildings which have been renovated or reconstructed with Federal funds if they cease to be used as an academic facility.

The Senate recedes.

212. The House bill, but not the Senate amendment, provides a definition of the term "Federal share."

The Senate recedes.

TITLE VIII—COOPERATIVE EDUCATION

213. The Senate amendment, but not the House bill, combines the authorizations of appropriations for grants for programs of cooperative education and training, demonstration, and research grants. The authorization of appropriations provided in the House bill and the Senate amendments are as follows:

Fiscal year	House bill		Senate bill authorization total
	Sec. 802 authorization	Sec. 803 authorization	
1981	$30,000,000	$5,000,000	$27,000,000
1982	30,000,000	5,000,000	31,000,000
1983	30,000,000	5,000,000	36,000,000
1984	30,000,000	5,000,000	41,000,000
1985	30,000,000	5,000,000	47,000,000

The Senate recedes.

214. Both the House bill and the Senate amendment raise the maximum grant which may be made to any individual institution, and the maximum amount which may be made per institution for consortia. The House bill raises the first amount from $175,000 to $250,000 and the second amount from $125,000 to $200,000. The Senate amendment raises the first amount to $400,000 and the second amount to $300,000.

The Senate recedes with an amendment providing $325,000 per institution and $250,000 per consortia member.

215. The Senate amendment, but not the House bill, provides that no "individual unit of any institution of higher education" may receive grants for more than five years. Current law which the House does not amend, provides that no institution may receive a grant for more than five fiscal years.

The House recedes.

216. The House bill provides that the Secretary may waive the percentage limitations on the amount of administrative cost which an institution may receive. The Senate amendment, which continues current law, prohibits waiver of such limitations.

The House recedes.

217. The Senate amendment, but not the House bill, specifically provides that training, research, and demonstration grants and contracts include grants and contracts for the conversion and expansion of comprehensive cooperative education programs in institutions of higher education.

The Senate recedes.

TITLE IX—GRADUATE PROGRAMS

218. The House bill, but not the Senate amendment, deletes from the statement of purpose and from authorized activities the intent to "expand" the quality of graduate and professional programs and substitutes the intent to "maintain" such programs.

The Senate recedes.

219. The House bill, but not the Senate amendment, adds a requirement for the Secretary to collect data necessary for the periodic assessment of the state of graduate education on an annual basis. Further, the House bill requires findings based on the Secretary's studies to be included in the Secretary's annual report under Title IX.

220. The House bill, but not the Senate amendment, requires the Secretary, within two years after the date of enactment of this Act, to prepare and submit to the Congress and the National Committee on Student Financial Aid a special report on financial aid in graduate education.

The House recedes with an amendment requiring that such an assessment and study be conducted by the National Commission on Student Financial Assistance.

221. The House bill, but not the Senate amendment, generally extends the provisions contained in Parts B, C and D of Title IX of the Act through Fiscal Year 1985, with the following revisions: (A) to reduce the authority of the Secretary to approve or disapprove particular programs of graduate education; (B) to require the Secretary in the allocation of public service fellowships, to seek to attract persons of ability from disadvantaged backgrounds; (C) to require the Secretary to separately find that a program is in effect of to be readily put into effect, and that the application describes the high quality or reasonable expectation of high quality of the program.

The Senate amendment consolidates the provisions presently contained in Parts B, C and D, except that it provides a separate authorization for programs of assistance for training in the legal profession. The Senate amendment authorizes the Secretary to award fellowships, up to $10,000, under the consolidated part, for each year, with the requirement that at least as much money be spent each year on public service and mining fellowships, and fellowships for the disadvantaged, as was spent in fiscal year 1979.

The conference substitute provides for a program of campus based grant awards to graduate and professional students based on financial need. The maximum award to a student is $4500 per year for three years. The substitute also provides for the maintenance of the level of awards (including institutional allowances) for the public service, mining and graduate and professional opportunity fellowship programs. The conferees intend that native Hawaiians be included among those considered to be "individuals from traditionally underrepresented groups." The substitute authorizes $60 million for fiscal year 1981 and for fiscal year 1982 and such sums as may be necessary for fiscal years 1983 through 1985.

222. The Senate amendment, but not the House bill, repeals Part C (Public Service Fellowships), Part D (Fellowships for other purposes), Part E (annual fellowship report) and Part F (General Assistance to Graduate Schools) of Title IX.

The House recedes.

223. The Senate amendment, but not the House bill, enacts a new Part C which provides National Graduate fellowships. This part would provide 450 portable competitive fellowships each year in the arts, humanities and social sciences. Selection of these fellowships would be based on merit, with the stipend awarded being related to the recipient's financial need. The National Graduate Fellows Program Fellowship Board would be created to select the areas in which the fellowships are to be awarded and to appoint panels for the selection of recipients.

The House recedes with an amendment requiring the membership of the National Graduate Fellows Program Fellowship Board be composed of representatives of both public and private institutions of higher education.

224. The Senate amendment, but not the House bill, establishes a new Part D of Title IX which provides for national talent grants for first year graduate and professional study. Grants under this new part are awarded by institutions of higher education to exceptionally qualified first-year graduate students who demonstrate need. No institution of higher education may receive more than three-fourths of 1% of the sums appropriated and no individual award may exceed $2,000. There are authorized to be appropriated for this purpose $15 million for fiscal year 1981 and fiscal year 1982, and such sums as may be necessary for fiscal year 1983, fiscal year 1984, and fiscal year 1985.

The Senate recedes. See explanation of the conference substitute on Part B.

225. The Senate amendment, but not the House bill, establishes a new Part E in Title IX. This part continues authority for assistance for training of the legal profession presently contained in Part D of Title IX which the House bill extends.

The House recedes.

226. The House bill, but not the Senate amendment, deletes a restriction in current law that prohibits preliminary training from being given more than three months prior to entry of individuals into courses of instruction in the legal profession.

The Senate recedes with an amendment limiting the period to six months.

227. The House bill authorizes $5 million for fiscal year 1981 and fiscal year 1982, and $10 million for fiscal year 1983, fiscal year 1984, and fiscal year 1985 for the training in the legal profession program. The Senate amendment authorizes $5 million for each of such years for that program.

The conference substitute provides the following authorizations:

Fiscal year:	Millions
1981	$5
1982	5
1983	7.5
1984	7.5
1985	10

228. Both the House bill and the Senate amendment continue the authority for the Law School Clinical Experience Program in Title IX (deleting such authority from Title XI).

Both provisions are identical.

229. The House bill provides that no law school may receive more than $75,000 in any fiscal year for the Law School Clinical Program. The Senate amendment provides that no law school may receive more than $125,000 in any fiscal year for such program and that no part of such funds may be used to pay for indirect costs or charges.

The House recedes with an amendment providing for a ceiling of $100,000.

230. The Senate amendment, but not the House bill, includes in the definition of accredited law school, organizations and associations of law schools.

The Senate recedes.

231. The House bill authorizes $10 million for the Law School Clinical Program for each of the fiscal years 1981–1985. The Senate amendment authorizes $5 million for fiscal year 1981; $6 million for fiscal year 1982; $7 million for fiscal year 1983; $8 million for fiscal year 1984; and $9 million for fiscal year 1985 for such programs.

The conference substitute authorizes the following amounts:

Fiscal year:	Millions
1981	$5
1982	8
1983	8
1984	9
1985	10

TITLE X—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

232. The Senate amendment, but not the House bill, includes a requirement that the Director of the Fund for the Improvement of Postsecondary Education establish procedures for reviewing and evaluating grants and contracts which shall not be subject to any review by officials outside of the Fund.

The House recedes.

233. The House bill authorizes appropriations for the Fund for the Improvement of Postsecondary Education of $75 million for each of the Fiscal Years 1981 through 1985. The Senate amendment authorizes appropriations for the Fund of $20 million for fiscal year 1981; $23 million for fiscal year 1982; $27 million for fiscal year 1983; $31 million for fiscal year 1984; and $36 million for fiscal year 1985.

The conference substitute provides the following authorizations:

$20,000,000 for Fiscal Year 1981,
$30,000,000 for Fiscal Year 1982,
$40,000,000 for Fiscal Year 1983,
$50,000,000 for Fiscal Year 1984,
$50,000,000 for Fiscal Year 1985.

TITLE XI—URBAN GRANT UNIVERSITY ACT

234. The authorizations of appropriations provided by the House bill and the Senate amendment are as follows:

Fiscal Year	House	Senate
1981	$50,000,000	$11,250,000
1982	70,000,000	18,750,000
1983	80,000,000	26,250,000
1984	90,000,000	33,750,000
1985	100,000,000	41,250,000

The conference substitute authorizes the following amounts:

$15,000,000 for Fiscal Year 1981,
$25,000,000 for Fiscal Year 1982,
$40,000,000 for Fiscal Year 1983,
$50,000,000 for Fiscal Year 1984,
$65,000,000 for Fiscal Year 1985.

235. The House bill provides that funds appropriated for the Urban Grant University Program are to remain available for the duration of a funded project in order to permit multiple year funding of projects. The Senate amendment also permits multiple year grants but provides that funds for the purpose of such grants for any year must be drawn from the appropriation for that year.

The House recedes.

236. The Senate amendment, but not the House bill, requires the Secretary to give priority to applications containing cooperative arrangements for urban universities in a single urban area.

The House recedes.

237. Both the House bill and the Senate amendment require local officials to be afforded a reasonable opportunity to review and comment upon the proposed project or projects. The House bill provides that these local officials are the chief executives of local agencies of general government within whose jurisditcion fall the needs to be addressed by the project or projects. The Senate amendment requires that the local officials to be consulted are the chief executives of local agencies of general government within the urban area and contiguous areas within which the urban university is loctaed.

The Senate recedes.

238. The Senate amendment, but not the House bill, requires the participation of the community in the development of projects assisted under this title.

The House recedes. The conferees require the Secretary to take into account the degree of participation of the affected community in developing any project under this title. The conferees intend that, during the planning and development of a Title XI project, affected citizens, community organizations and members of the public be afforded opportunities to express their interests and concerns. However, the conferees do not intend that this provision be construed to give standing, as a matter of right, to any individual, organization or agency to be made a part of the project planning process. The conferees emphasize that this provision does not authorize the Secretary to issue any regulations defining the phrase "community" nor to establish by regulation or guideline any rigid set of standards or procedures necessary to meet this requirement. The conferees believe that appropriate community participation could be achieved, for example, through public hearings held within the affected community, community discussions and wide solicitation for public comment.

239. The House bill, but not the Senate amendment, allows the non-Federal share of costs to be provided in the form of services, supplies, or equipment.

The House recedes with an amendment requiring that not less than one-half of the non-Federal share shall be cash contributions.

240. The House bill requires the Secretary to designate one urban area in any state in which there is no SMSA with a population of 500,000. The Senate bill provides that such an area is to be designated by the state entity under Section 1203.

The Conference substitute requires that if there is no 1203 entity within the State the Secretary shall designate one urban area.

TITLE XII—GENERAL PROVISIONS

241. Both the House bill and the Senate amendment repeal Section 1205 (establishing an Advisory Council on Graduate Education) and Section 1208 (containing certain funding requirements). In addition, the House bill repeals Setcion 1202 (requiring states to establish postsecondary education commissions) and Section 1206 (authorizing the Commissioner to require cost of education data from institutions of higher education).

The Senate recedes.

242. Both the House bill and the Senate amendment establish a new Section 1203 of the Act relating to Federal-State relations, which replaces Sections 1202 and 1203 of current law. This new section replaces requirements in current law that States establish or designate a State commission with a specified structure (popularly referred to as "1202 commissions"), in order to be eligible for Federal assistance for comprehensive statewide planning. The new Section 1203 contained in both the House bill and the Senate amendment replaces certain structural requirements with functional requirements, in order to permit States discretion in their internal organization.

The House bill requires each state desiring to receive assistance under certain identified applicable programs to submit an agreement to the Secretary which is to include (A) a designation of a State agency or agencies responsible under State law for comprehensive statewide planning or financing for postsecondary education; (B) a designation of the responsible agency and a description of their activities under the applicable programs; (C) a description of the activities of all entities responsible for educational and occupational information to youths and adults, continuing education services, student assistance administration, authorizing institutions of higher education, and statewide coordination of governance of postsecondary education sectors; (D) a description of the relationship between planning activities of State entities previously identified; and (E) assurances by the State that all interested persons are involved in the comprehensive statewide planning process, that the State will properly and effectively administer the program, that the State will use fiscal and accounting procedures necessary to proper control of Federal funds, and that the State will not use Federal funds to supplant other resources.

The Senate amendment provides that each State desiring to receive assistance under applicable programs must submit an agreement containing assurances by the State that (A) the State will provide for the proper and efficient administration of applicable programs, (B) the State will provide fiscal and accounting procedures necessary for the proper control of Federal funds, (C) the State will insure that Federal funds will not be used to supplant other resources, and that equitable and appropriate criteria will be used in evaluating applications and proposals for grants and contracts under applicable programs, and (D) that the State has a comprehensive planning and policy formulation process which considers the relationship between State administration of applicable programs and similar State programs, encourages State policy to consider the effect of declining enrollments, consider the postsecondary education needs of unserved and underserved individuals (including those beyond traditional college age), considers the resources of various institutions capable of providing postsecondary education opportunities, and provides for direct, equitable and active participation in the comprehensive planning or policy formulation process of all interested persons.

Further, the Senate amendment provides that such participation be insured by including at least one representative of certain specified categories of interested persons as representatives in the State entity, unless prohibited by State law.

The House recedes with an amendment which modifies the language in the Senate amendment requiring participation through membership on a state entity by substituting language which provides states with increased flexibility to achieve such participation, as consistent with state law, through membership on state planning commissions, advisory councils or other state entities established by the state to conduct a federally assisted comprehensive planning or policy formulation process. The amendment further limits the authority of the Secretary to deny eligibility for applicable programs only to matters of proper and efficient administration, fiscal control and fund accounting, anti-supplanting, and use of equitable criteria for evaluation of applications.

243. The House bill, but not the Senate amendment, contains a specific provision prohibiting the Secretary from requiring any State to adopt, as a condition for entering into a 1203 agreement, or for participation in any applicable programs, a specific State organizational structure.

The Senate recedes.

244. The House bill defines applicable programs as programs under Title I (Education Outreach), Subpart 3 of Title IV–A (State Student Incentive Grants), and Part A of Title VII (Construction of Higher Education Facilities). The Senate amendment excludes from this definition Subpart 3 of Title IV–A.

The Senate recedes. The conferees, by including the State Student Incentive Grant Program as an applicable program, wish to emphasize that this should not be interpreted as a requirement, or even a suggestion, that any state with a state student assistance agency separate from the state agency responsible for comprehensive planning should merge such agencies or place one agency in a subordinate relationship to the other. The concept of a single state agreement should not be interpreted as a requirement for a single state agency. The assignment of responsibility for administration of the various applicable programs shall be for each state to determine in accordance with state law and the state's unique governance structure.

245. The House bill, but not the Senate amendment, authorizes the Secretary to make such modifications of any program under the Act as he deems necessary in order to adapt such programs to the needs of the territories, and requires the Secretary within 18 months after the time of enactment to conduct an analysis of the unique educational needs of the territories.

The Senate recedes.

The Conferees stress that such modifications shall be limited only to the programs to which the territories are entitled, to the purposes of those programs, and shall not be construed to authorize the termination of any program.

246. The House bill, but not the Senate amendment, authorizes $2 million for each fiscal year to support the cost of postsecondary education programs in Guam for nonresident students from the other Pacific Territories.

The Senate recedes with an amendment limiting the authorization to five years.

247. The Senate amendment, but not the House bill, establishes a National Advisory Committee on Accreditation and Institutional Eligibility to advise the Secretary.

The House recedes with an amendment limiting the mission of the Committee to the current statutory functions of the Secretary and to the mandate of the former committee.

248. The Senate amendment, but not the House bill, contains certain conforming amendments to reflect the establishment of the Department of Education.

The House recedes.

Title XIV—Miscellaneous Provisions

249. Under the Senate amendment, but not the House bill, the free-standing provisions of the Education Amendments of 1980 would take effect upon enactment.

The House recedes.

250. The Senate amendment, but not the House bill, provides that the amendments made by Par B of Title IV of the Act (guaranteed and insured student loans) shall apply to loans made on or after October 1, 1980.

251. The Senate amendment, but not the House bill, provides that the provisions of Part E of Title IV of the Act (direct student loans) in effect prior to October 1, 1980 shall continue to apply to loans made from funds appropriated prior to September 30, 1980.

The conference substitutes provide for appropriate effective dates to meet the unique requirements of implementing the amendments to Parts B and E of Title IV and to Title VII of the Higher Education Act of 1965.

252. The Senate amendment, but not the House bill, makes the College of Micronesia a land grant college.

The House recedes.

253. The Senate amendment, but not the House bill, extends the authorization of appropriations for the National Institute of Education at a rate equal to certain specified percentages of the sum of the amount appropriated or available to the Department of Education. That percentage increases from .75 percent in fiscal year 1981 up to 1.5 percent for fiscal year 1985.

The conference substitute provides the following authorizations:

$125,000,000 for Fiscal Year 1981,
$145,000,000 for Fiscal Year 1982,
$165,000,000 for Fiscal Year 1983,
$190,000,000 for Fiscal Year 1984,
$215,000,000 for Fiscal Year 1985.

254. The Senate amendment, but not the House bill, adds age to the category of demographic characteristics on which the United States is not to discriminate in the provision of quality higher education opportunities.

The House recedes with an amendment adding handicap to the category.

255. The Senate amendment, but not the House bill, adds, as a priority for research by the National Institute of Education, special problems of the non-traditional student, including older and part-time students.

The House recedes with an amendment encouraging studies of language, international education and culture, and the needs of early adolescents.

The Conferees note that little information has been gathered systematically on the needs of early adolescents and the schools which serve them. The Conferees intend that the National Institute of Education, in each of its mandatory priority research and development areas, give particular attention to research regarding this age group and their schools. The Conferees anticipate that the NIE will support research and development activities to determine (1) what organization of schooling is best in meeting the needs of early adolescents, and (2) what policies, programs, practices and services are essential to meet the needs of early adolescents. The NIE's activities in this area should include efforts to identify and promote the best approaches to professional development for faculty, administrators, and others who provide educational services to early adolescents.

The Conferees further recognize that if the condition of schooling for early adolescents is to be improved as the Conferees believes it must, it is essential to create easier access to data, program and research information about this age group and school population. Access to and dissemination of appropriate research information as well as successful program models is particularly critical in light of this Conference's efforts to stimulate major education and training program initiatives in secondary schools during the coming year. Without intensified concentration of research and development resources on successful programming for the early adolescent, schools serving these students will not be equipped, in a timely fashion, to mount the kinds of school-to-work transition programs envisioned by the Conferees.

It is the Conferees' intention that the NIE will not confine its initiatives on early adolescents to the one subunit that has begun to work in this area, but will encourage appropriate activities by other work teams. The Conferees expect that clear documentation of these research, development and dissemination activities and an assessment of the results of those activities concerning early adolescents and the schools serving them will be included in the NIE's annual report to the Congress.

The Conferees mandate that not less than three members of the National Council on Educational Research shall be experienced and knowledgeable in the conduct of educational research.

Since only one member of the NCER is currently engaged in educational research, the Conferees were persuaded that the Council would be strengthened by this requirement, and that the individuals so appointed would provide greater leadership to the Council and the NIE. Due to current vacancies on the Council, no current member will be asked to step down as a result of this amendment.

The Conferees also expect that the National Council on Educational Research should represent the broad array of entities and individuals who will be directly or indirectly involved with NIE research activities. It is the Conferees' view that such broadened representation will be drawn from (1) public and private non-profit community-based organizations, such as those which provide educational support and training services to special needs students or youth who have dropped out of school; (2) education advocacy organizations which are engaged in independent monitoring of school policies and practices; (3) state and local level education researchers, practitioners and policymakers who are involved in the daily operation and administration of education programs; and (4) students and the parents of students.

Given the Conferees' recognition of the increasing need for linkages between education professionals and others who either serve young people or will employ them as they grow to be adults, it is critical that educational research activities reflect this breadth of views. Since NCER is the policymaking body for the nation's foremost educational research agency, the NIE, the Conferees anticipate that broadened membership of the NCER will enable it to address research needs spanning the wider network of institutions and agencies providing educational services to students of every age.

While the Conferees note that existing law requires the NIE to submit an annual report to the President and the Congress, it anticipates that in the future, this annual report shall include a list and description of all grants and contracts awarded by the Institute subsequent to submission of the previous annual report to the Congress, and shall specify (with respect to each grant and contract listed in the report) the amount of the grant or contract, its purpose and duration, and the educational policy issue to be addressed by the project conducted under the grant or contract; shall include the major findings of any research prjects completed under the auspices of the Institute subsequent to submission of the previous annual report to the Congress; and shall include an assessment of the progress of the Institute in achieving its priority research and development needs.

The Conferees note that during its short history the NIE has lacked the continuity of leadership necessary to the centerpiece of educational research in the Department of Education.

To assure greater continuity in the future, the Conference encourages the appointment of the NIE Director for a period of five years, serving, of course, at the pleasure of the President. The Conferees believe that setting a specified term of office similar to that provided the Director of the National Science Foundation and the Chairman of the Arts and Humanities Endowments would lend stability to the Institute without restricting the authority of the President to remove the Director, if desired. It is understood that any individual serving as the Director may be reappointed to that office.

The Conferees direct the NIE to expand the scope of its activities and participants through increased involvement of groups and individuals outside the traditional research community. As different sectors of the society become involved in providing basic, remedial and employment related education, it becomes increasingly necessary to involve these groups in research, development, and dissemination activities conducted by the federal government.

The Conferees hope that in awarding grants the NIE would avoid a closed circle of reviewers, grantees and contractors which has characterized other national research agencies. The Conferees believe that the Institute should broaden the base of its review panels to include representatives of social advocacy organizations and public and private nonprofit community-based organizations involved with education policy and practice.

In addition, the Institute, to the extent practicable, should include among those awarded research and development grants and contracts the following: research institutions other than laboratories or centers which receive funds from the NIE, private and public community-based non-profit organizations, education practitioners, and education policymakers employed at both State and local levels. Organizations of this nature are becoming more and more involved in formulating education policy and both they and the NIE should benefit from a closer working relationship. Nothing in this paragraph should be interpreted to diminish open and fair competition under the standards of peer review for all grants and contracts.

The Conferees wish to clarify the intent of Sec. 405(e)(3) of the General Education Provisions Act providing the Director of the Institute with the authority to establish and maintain research fellowships. It is the intent of the Congress that such fellowships should be supported without regard to the physical location of individual fellows. Conferees understand that a departmental interpretation of the fellowship authority has limited supported to fellows physically located in the Institute's offices. The House Committee's version clarified this authority by stating that fellows could be supported in other locations. It is the intent of the Congress that the purpose of the authority to support highly qualified research fellows from the United States and abroad should be implemented without regard to the physical location of the fellow.

It is the intent of the Conferees that regular oversight be conducted by Congress to insure the intent of this title as the NIE will be the major research component of the new Department of Education. If the Institute is found to be wanting in its efforts to carry out the provisions of this title, then Congress will take appropriate legislative steps to correct such inconsistencies. It is the hope of the Conferees that the NIE will continue to engage in ongoing dialogue with Congress as it carries out its research activities.

256. The Senate amendment, but not the House bill, repeals the authority for the Panel for the Review of Laboratory and Center Operations.

The House recedes.

257. The Senate amendment, but not the House bill, authorizes the establishment of the Robert A. Taft Institute Trust Fund to assist in the development of the Robert A. Taft Institute of Government. $11.25 million is authorized to be appropriated to the fund, the income from which shall be paid to the Institute to match the total amount of private contributions received by the Institute in the preceding fiscal year.

The House recedes with an amendment authorizing an appropriation of $750,000 per year to be matched by funds from private sources.

258. The Senate amendment, but not the House bill, amends the contingent extension provision of the General Education Provisions Act to authorize the contingent extension of any forward funded program for two fiscal years.

The House recedes.

259. The Senate amendment, but not the House bill, amends the General Education Provisions Act to authorize the Congress to disapprove Department of Education regulation *in whole or in part.*

The House recedes.

260. The Senate amendment, but not the House bill, authorizes appropriations to the Secretary of Education for fiscal year 1981 of $2.5 million for the College Science Teacher Program, and $5 million for the Minority Institution Science Program.

The House recedes.

261. The Senate amendment, but not the House bill, extends the life of the Commission on the Review of the Federal Impact Aid Program for the purpose of enabling such Commission to prepare and submit to the President and to Congress not more than three supplemental reports after the submission of its final report.

The House recedes with a substitute amendment extending the reporting period of the existing Impact Aid Commission until September 1, 1981, and providing that the Commission shall terminate on September 30, 1981.

262. The Senate amendment, but not the House bill, amends the General Education Provisions Act to provide that no regulation affecting any institution of higher education in the United States shall become effective unless the agency promulgating such regulation publishes in the Federal Register an educational impact assessment statement which shall identify what information specified by the regulation is available from another authority of the United States and assess the burden of compliance with the regulation by institutions of higher education.

The House recedes with an amendment providing that such statement shall only determine whether any information required to be transmitted under such regulation is already being gathered by or available from any other authority or agency of the United States.

263. The Senate amendment, but not the House bill, directs the Secretary of Education to make a comprehensive study of programs authorized by the Elementary and Secondary Education Act, the Vocational Education Act, and the Education of the Handicapped Act in order to analyze if there are duplications, conflicts, and unnecessary reporting requirements contained in those laws or regulations. The Secretary shall submit a report to Congress on this study. In carrying out the study, the Secretary is authorized to enter into agreements with not less than four nor more than 10 States for the conduct of study projects. The Secretary, through the National Institute of Education, shall analyze the State study projects and shall develop, with cooperation with the Intergovernmental Council on Education, a plan for carrying out the study. Such plan shall be submitted to Congress. The Secretary shall make a final report to the Congress on the study not later than January 1, 1983. $7 million is authorized for each fiscal year 1981–1982, and $1 million is authorized for fiscal year 1983. The Secretary is also authorized to use funds from other available sources.

The House recedes with an amendment authorizing the Secretary to make a comprehensive study of programs authorized by the Elementary and Secondary Education Act, the Vocational Education Act and the Education of the Handicapped Act in order to analyze if there are unnecessary duplications, conflicts and reporting requirements in these programs, while at the same time insuring the delivery of educational services and the ability of the federal government to monitor and evaluate the programs' effectiveness in serving the desired target populations. Such study shall be prepared and delivered to the Congress within one year after the enactment of this act.

264. The Senate amendment, but not the House bill, updates Section 502 of the Rehabilitation Act of 1973 by redesignating the Secretary of the Department of Health, Education and Welfare as the Secretary of the Department of Health and Human Services and adding the Secretary of Education to the Architectural and Transportation Barriers Compliance Board.

The House recedes.

265. The Senate amendment, but not the House bill, amends Section 502(h) of the Rehabilitation Act of 1973 to require that the Architectural and Transportation Barriers Compliance Board transmit its annual report to the Labor and Human Resources Committee in the Senate and the Education and Labor Committee in the House.

The House recedes.

266. The Senate amendment, but not the House bill, mandates the creation of the Office of Information Clearinghouse for Handicapped Individuals within the Department of Education.

The House recedes.

267. The Senate amendment, but not the House bill, authorizes $750,000 for fiscal year 1981 to establish the William Levi Dawson Chair of Public Affairs at Fisk University at Nashville, Tennessee.

The House recedes.

268. The Senate amendment, but not the House bill, amends the Impact Aid Act to create a new Title IV which is to provide benefits for Native Hawaiians in a manner comparable to the benefits of Native Americans under the Indian Education Act (Public Law 92–318) and establishes certain additional programs with respect to elementary and secondary education, postsecondary education, adult education, and teacher training for Native Hawaiians.

The House recedes with an amendment establishing an advisory counsel to evaluate the needs of native Hawaiians and the effectiveness of existing state and federally assisted educational programs in meeting such needs. A total of $500,000 is authorized for the period of fiscal years 1981 through 1983.

269. The Senate amendment, but not the House bill, authorizes $6 million for fiscal year 1981 for a grant to establish the General Daniel James Memorial Health Education Center to be located in the Tuskegee Institute in Tuskegee, Alabama.

The House recedes.

270. The Senate amendment, but not the House bill, contains certain provisions that: (1) extend the authorization of appropriations for construction under the Navajo Community College Act for one year; (2) change the funding formula to require that credit hours for the fall, spring, and summer terms for independent students be totalled and divided by 15 for the purpose of determining the number of full-time, equivalent students; and (3) modify Title I of the Tribally Controlled Community College Assistance Act of 1978 to permit Navajo Community College to receive funds under the Higher Education Act and other applicable Federal programs.

The Conference substitute extends the authorization of appropriations for construction for one year, changes the authorization to an amount based on the actual cost of operation and maintenance of the institution, and includes the modification permitting the institution to receive funds under the Higher Education Act and other applicable programs.

271. The Senate amendment, but not the House bill, amends the Impact Aid Act to provide funds to local education agencies experiencing increased enrollments due to the entry into the schools of refugee children, and authorizes appropriations of such sums as may be necessary for this purpose.

The conference substitute authorizes a one-year provision amending the Impact Aid laws to provide special assistance to local school districts facing influxes of Cuban, Haitian and Indo-Chinese refugee children.

This provision is intended as a stop-gap measure while the Congress deliberates a more comprehensive program to meet the needs of these children. This provision is adopted because school districts are faced with the immediate need for funds, and this is the most expeditious means to provide this aid.

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Dick Schweiker,
Managers on the Part of the Senate.

○

96th Congress } HOUSE OF REPRESENTATIVES { Rept. 96–1252
2d Session } { Part 1

TELECOMMUNICATIONS ACT OF 1980

REPORT

together with

DISSENTING VIEWS

BY THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

[To accompany H.R. 6121]

[And including cost estimate of the Congressional Budget Office]

August 25, 1980.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

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96TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 96-1252 Part I

TELECOMMUNICATIONS ACT OF 1980

AUGUST 25, 1980.—Ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 6121]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 6121) to amend the Communications Act of 1934 to make certain revisions in the provisions of such Act relating to the regulation of telecommunications activities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Telecommunications Act of 1980".

DECLARATION OF PURPOSES; DEFINITIONS; REGULATORY AUTHORITY OF COMMISSION

SEC. 2. (a) Section 201 of the Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by striking out the heading for such section, by striking out the section designation preceding subsection (a), and by inserting in lieu thereof the following:

"DECLARATION OF PURPOSES

"SEC. 201. (a) The Congress hereby declares that it is the purpose of this title—

"(1) to assure that all the people of the Nation have available, at reasonable and affordable rates, telecommunications services, facilities, and products which are reliable, efficient, and diverse, and which promote the national defense and security and the emergency preparedness of the Nation; and

"(2) to assure that the people, economy, and general welfare of the Nation will benefit from continuing improvements in telecommunications technology.

"(b) In achieving the purposes specified in this section, competition and the private sector shall be relied upon to the maximum extent possible to determine the availability, variety, quality, and cost of domestic telecommunications services, facilities, and products. The Commission shall exercise regulatory authority, in accordance with the provisions of this title, only to the extent necessary—

"(1) to achieve such purposes;

"(2) to assure that residential customers and persons residing in rural areas have access to telecommunications service at reasonable and affordable rates;

"(3) to foster a competitive environment;

"(4) to ensure the continued vitality of United States telecommunications enterprises and products in international markets; and

"(5) to carry out the transition to a fully competitive communications industry in accordance with the provisions of this Act.

"(c) In furtherance of the purposes specified in this section, and in accordance with the provisions of this Act, the Commission, and each State commission, shall have authority to take such action as may be necessary to assure that the costs of the competitive activities of dominant carriers (including affiliated organizations and fully separated subsidiaries of dominant carriers) and other carriers are not borne by the users of noncompetitive services or facilities of such carriers.

"(d) In furtherance of the purposes specified in this section, neither the Commission, nor any State commission, shall have any authority to take into account revenues derived from activities which are not subject to the regulatory authority of the Commission under this title, or to the regulatory authority of any State commission, in connection with determinations made by the Commission, or by any State commission, relating to rates which may be charged by carriers, or allowable rates of return for carriers, for the provision of telecommunications services which are subject to such regulatory authority, except that, subject to the provisions of section 231(e)(7), any State commission (if such State commission was engaged in such practice as of June 1, 1980) may take into account for ratemaking purposes revenues derived from printed directory advertising and from other sources customarily used in carrier ratemaking (other than terminal equipment and terminal devices).

"DEFINITIONS

"SEC. 202. For purposes of this title:

"(1) The term 'affiliated organization', when used with reference to a dominant carrier, when used with reference to any interexchange carrier (for purposes of section 213(b)), and when used with reference to any regulated carrier (for purposes of section 254(a)), means any company or other business organization affiliated with such carrier, and any subsidiary or other entity of such carrier (other than a fully separated subsidiary, and other than any subsidiary or other entity specified in paragraph (3)(B)).

"(2) The term 'basic telecommunications service' means that basic two-way switched voice telephone service which is provided as an interexchange telecommunications service or intraexchange telecommunications service on the date of the enactment of the Telecommunications Act of 1980 and which is provided on a universal basis to the general public. Such term includes any other interexchange telecommunications service or intraexchange telecommunications service which the Commission, from time to time, determines by rule is recognized as an essential part of an efficient nationwide system of basic telecommunications.

"(3) The term 'dominant carrier' means any interexchange carrier classified as a dominant carrier by the Commission under section 213(a). Such term includes—

"(A) any person who owns or controls such carrier; and

"(B) any subsidiary or other entity of such carrier or such person (other than any fully separated subsidiary), to the extent that any such subsidiary or other entity provides interexchange telecommunications service or intraexchange telecommunications service.

"(4) The term 'fully separated subsidiary' means any fully separated subsidiary established by a dominant carrier or by any other regulated carrier under section 214(a)(2)(A), or by a dominant carrier or any affiliated organization under section 214(a)(3)(A)(ii) or under section 218(b)(1)(B).

"(5) The term 'interconnection' means any connection established between a carrier and the equipment or facilities of any customer of such carrier, or between 2 or more carriers, for the purpose of facilitating the transmission or retransmission of telecommunications.

"(6) The term 'interexchange carrier' means any carrier which provides interexchange telecommunications service to the public.

"(7) The term 'interexchange telecommunications service' means the provision by a carrier of telecommunications service between local exchange areas. Such term includes the local distribution of interexchange telecommunications service by any means (including telecommunications facilities furnished by intraexchange carriers).

"(8) The term 'international carrier' means—

"(A) any carrier which is engaged solely in providing telecommunications service between 1 or more local exchange areas and any point in a foreign nation; and

"(B) any carrier which provides telecommunications service specified in subparagraph (A) and also provides other telecommunications service, except that such carrier shall be considered to be an international carrier only to the extent such carrier provides telecommunications service specified in subparagraph (A).

"(9) The term 'intraexchange carrier' means any carrier which provides intraexchange telecommunications service to the public.

"(10) The term 'intraexchange telecommunications service' means the provision of telecommunications service by a carrier between points within a single local exchange area.

"(11) The term 'local exchange area' means any geographical service area designated as a local exchange area by a State commission (or by the transitional joint board) in accordance with section 211(d)(2).

"(12) The term 'National Telecommunications Pool' means the National Telecommunications Pool established in section 233(d)(1).

"(13) The term 'private telecommunications system' means a private network or facility utilized by any person (other than a carrier) solely for the provision of any telecommunications service.

"(14) The term 'regulated carrier' means—

"(A) any intraexchange carrier which is subject to the regulatory authority of the Commission under section 211(a)(3);

"(B) any interexchange carrier which is subject to the regulatory authority of the Commission under section 212(a)(3), section 212(a)(4), section 212(a)(5), or section 214(b); and

"(C) except for purposes of section 216(a)(3), any international carrier.

"(15) The term 'service, facility, or product incidental to telecommunications' includes, but is not limited to, data processing and information services (other than any mass media service or mass media product), data processing equipment, computer software, and terminal equipment or terminal devices. Such term also includes any service, facility, or product designated by the Commission in accordance with section 211(a)(8). For purposes of this paragraph, the term 'mass media' has the meaning given it in section 218(e)(3).

"(16) The term 'standard metropolitan statistical area' means the area in and around a city of 50,000 inhabitants or more, as defined by the Secretary of Commerce.

"(17) The term 'telecommunications service' means a service which provides for the transmission or retransmission of telecommunications and which may perform circuit or message switching, network control and routing, and internal network signal processing functions related to such switching, control, and routing. Such term does not include the provision of terminal equipment or terminal devices.

"(18) The term 'transitional joint board' means the transitional joint board established under section 231(a).

"PART A—REGULATORY AUTHORITY OF COMMISSION

"SCOPE OF REGULATORY AUTHORITY OF COMMISSION

"SEC. 211. (a) The Commission—

"(1) shall have authority to carry out the provisions of this title with respect to—

"(A) any carrier which furnishes telecommunications services or makes available telecommunications facilities, or both, between local exchange areas; and

"(B) any dominant carrier, and any affiliated organization or fully separated subsidiary of a dominant carrier;

"(2) shall have authority to establish and administer rules and regulations applicable to—

"(A) the rates, terms, and conditions for the use of intraexchange telecommunications services and facilities by interexchange carriers and other customers; and

"(B) the facilities of intraexchange carriers, if such facilities are used as part of any network for the provision of interexchange telecommunications service and are not used primarily for the provision of intraexchange telecommunications service, except that nothing in this subparagraph shall be construed to authorize the Commission to establish rates for intraexchange telecommunications service;

"(3) subject to the provisions of subsection (e), shall provide for the regulation of the provision of basic telecommunications service by any intraexchange carrier in order to assure that any such carrier furnishes such service at reasonable and affordable rates if a reasonable request is made for such service and that such carrier does not discriminate with respect to the rates, terms, and conditions for such service;

"(4) shall review and shall approve, disapprove, or modify requests for the pooling of revenues by interexchange carriers or intraexchange carriers in accordance with subsection (c);

"(5) subject to the provisions of section 252(b)(4), shall exercise all the powers, and discharge all the responsibilities, of the transitional joint board, upon the termination of the transitional joint board in accordance with section 231(i);

"(6) shall not have any authority to regulate the provision of terminal equipment or terminal devices—

"(A) except to the extent necessary to carry out the functions of the Commission under section 201(c), section 214(a), section 214(c), section 216(b)(2)(B), section 216(d)(3)(B), section 218, section 219, section 231(a)(3), section 233(b)(5), and section 254; and

"(B) except that the Commission shall have authority to establish by rule (in accordance with subsection (g)) uniform, minimum, technical standards applicable to interconnection of the telecommunications facilities of any carrier with any terminal equipment or terminal device which is owned or leased by a customer of such carrier, for the purpose of ensuring the fostering of a competitive environment and for the purpose of ensuring that any such terminal equipment or terminal device will not cause—

"(i) electrical hazards to personnel of the carrier involved;

"(ii) damage to the equipment or facilities of such carrier;

"(iii) any malfunction of the billing equipment of such carrier; or

"(iv) any degradation of service to other customers of such carrier;

"(7) shall not have any authority to regulate the acquisition, processing, or marketing of information or any other data processing service or product, including any remote access data processing service which uses telecommunications in the provision of such service, other than to the extent such regulation may be required under section 201(c), section 214, section 218, section 219, section 233(b)(5), or section 254; and

"(8) shall have authority to determine in disputed cases whether any service, facility, or product is incidental to telecommunications.

"(b) The Commission, in establishing or approving rates under subsection (a)(2)(A), shall be bound by the formula established and maintained by the transitional joint board under section 231(e)(3) for purposes of ensuring the availability of the amount of funds necessary for the operation of the National Telecommunications Pool.

"(c)(1) Beginning on the date schedules of fees take effect under section 233(c)(3)(A), the Commission shall review, and shall approve, disapprove, or modify, any request submitted to the Commission—

"(A) by interexchange carriers for the pooling of net revenues associated solely with the provision of interexchange telecommunications service (after the payment of intraexchange access fees), except that no request may be made for the joint pooling of revenues associated with—

"(i) the provision of basic telecommunications service and other types of interexchange telecommunications service; or

"(ii) the provision of interexchange telecommunications service which is subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission, and interexchange telecommunications service which is not subject to such regulation; or

"(B) by intraexchange carriers for the pooling of revenues derived from intraexchange access fees under section 233.

"(2) The Commission shall approve any request submitted under paragraph (1) if the Commission determines that the pooling of revenues proposed in such request—

"(A) is necessary to maintain the availability of basic telecommunications service or to maintain reasonable and affordable access to facilities for the provision of interexchange telecommunications service;

"(B) in the case of a request submitted under paragraph (1)(A), is necessary to defray those costs of providing interexchange telecommunications service which are not addressed in the establishment of intraexchange access fees under section 233;

"(C) is consistent with the purposes of this Act; and

"(D) is justified by circumstances prevailing at the time such request is submitted to the Commission.

"(3) The Commission, acting upon its own motion or upon the request of any person, shall have authority to review and modify any determination made by the Commission under this subsection at any time after the end of the 1-year period following the date of such determination.

"(d)(1) Except as otherwise provided in this title, all regulation of intraexchange telecommunications service provided by carriers is reserved to the States, except that no State shall have any authority—

"(A) to regulate the provision of terminal equipment or terminal devices (other than to the extent such regulation may be required under section 201(c), section 219, section 231(a)(3), or section 233(b)(5)); or

"(B) to regulate the acquisition, processing, or marketing of information or any other data processing service or product, including any remote access data processing service which uses telecommunications in the provision of such service (other than to the extent such regulation may be required under section 201(c), section 214, section 218, section 219, section 233(b)(5), or section 254).

"(2) Not later than 1 year after the date of the enactment of the Telecommunications Act of 1980, the State commission of each State shall establish boundaries for local exchange areas in such State. In any case in which a State commission fails to establish such boundaries before the end of such 1-year period, the transitional joint board shall have authority to establish such boundaries. Subject to the authority of the Commission under this title, the State shall exercise exclusive regulatory authority with respect to any telecommunications service provided by a carrier to the extent such service originates and terminates in any such local exchange area.

"(3)(A) Subject to subparagraph (B)—

"(i) the boundaries of any local exchange area shall be located entirely within 1 State; and

"(ii) no local exchange area which includes part or all of 1 standard metropolitan statistical area may include any part of any other standard metropolitan statistical area.

"(B) The transitional joint board shall have authority to make minor modifications in the requirements established in subparagraph (A) if any such modification is necessary to carry out the purposes of this Act.

"(4) A State commission may not make a change in the boundaries of any local exchange area unless such change is approved by the transitional joint board. In any case in which any such change proposed by a State commission is consistent with the requirements of this subsection, such change shall be considered to be approved by the transitional joint board if the transitional joint board fails to take any action with respect to such proposed change before the end of the 60-day period after the submission of such proposed change to the transitional joint board.

"(5) The Commission shall have the authority to delegate to State commissions the authority to certify intraexchange access fees for the use of intraexchange telecommunications services or facilities by interexchange carriers or other customers. In any case in which the Commission makes such a delegation, the transitional joint board shall establish, and each State commission shall comply with, rules and procedures applicable to—

"(A) the jurisdictional allocation of plant and operating expenses; and

"(B) the allowable rate of return for plant allocations to the origination and termination of interexchange telecommunications service.

"(6) In any case in which charges for the use of the facilities of intraexchange carriers are imposed on a usage basis, the provisions of this title shall not be construed to restrict the authority of State commissions to include in such charges any use of the intraexchange telecommunications services or facilities involved which, at the option of the subscriber involved, originates or terminates interexchange telecommunications service. Such charges shall not discriminate between the use of such facilities for interexchange telecommunications service and intraexchange telecommunications service.

"(e) In any case in which the Commission exercises its authority to provide for the regulation of the provision of basic telecommunications service by any intraexchange carrier under subsection (a)(3), such authority of the Commission shall be limited to the regulation of the provision of such service. The provisions of subsection (a)(3) shall not be construed to establish any authority under which the Commission may regulate any service provided by such carrier other than basic telecommunications service.

"(f) The Commission shall not have any authority to include in any license issued by the Commission under title III any term or condition which is inconsistent with any limitation imposed upon the regulatory authority of the Commission in this title.

"(g) The Commission, in exercising its authority under subsection (a)(6)(B), shall, to the extent consistent with the public convenience and necessity, and taking into account continuing technological innovation, consider technical standards adopted by appropriate international standards organizations.

"REGULATION OF INTEREXCHANGE CARRIERS

"SEC. 212. (a) Notwithstanding any other provision of this title, no interexchange carrier, other than any carrier classified as a dominant carrier by the Commission and any other regulated carrier (other than a regulated carrier specified in section 202(14)(A)), shall be subject to any regulatory authority of the Commission under this title, except that the Commission—

"(1) shall have authority to require the payment of an intraexchange access fee by any interexchange carrier in accordance with section 233 for interconnection with the facilities of any intraexchange carrier;

"(2) shall have authority to establish standards, and take other appropriate action, to promote the national defense and security and the emergency preparedness of the Nation;

"(3) subject to the provisions of subsection (b), shall require, and provide for the regulation of, the provision of basic telecommunications service by any interexchange carrier in order to assure that any such carrier furnishes such service at reasonable and affordable rates if a reasonable request is made for such service and that such carrier does not discriminate with respect to the rates, terms, and conditions for such service;

"(4) shall have authority to regulate any telecommunications service (which is subject to the regulatory authority of the Commission under this title) which is offered by any interexchange carrier in direct association with a dominant carrier; and

"(5) subject to the provisions of section 215(a)(3), shall have authority to regulate any interexchange carrier (other than any interexchange carrier subject to the regulatory authority of the Commission under paragraph (3) or paragraph (4)) to the extent that such carrier is offering any service which—

"(A) is defined as an interexchange telecommunications service under this Act, as amended by the Telecommunications Act of 1980; and

"(B)(i) is regulated by any State commission, but is not also provided by such carrier under tariff on file with the Commission, on the day before the date of the enactment of the Telecommunications Act of 1980; or

"(ii) is provided under tariff on file with the Commission on the day before the date of the enactment of the Telecommunications Act of 1980.

"(b) In any case in which the Commission exercises its authority to provide for the regulation of the provision of basic telecommunications service by any interexchange carrier under subsection (a)(3), such authority of the Commission shall be limited to the regulation of the provision of such service. The provisions of subsection (a)(3) shall not be construed to establish any authority under which the Commission may regulate any service provided by such carrier other than basic telecommunications service.

"CLASSIFICATION OF CARRIERS

"SEC. 213. (a) The Commission, in accordance with the provisions of subsection (b), shall classify interexchange carriers according to whether each such carrier is a dominant carrier.

"(b) The Commission shall classify an interexchange carrier as a dominant carrier if the Commission determines that such interexchange carrier (through its own activities and through joint activities with any affiliated organization and any fully separated subsidiary of such carrier)—

"(1) furnishes telecommunications services or facilities in a substantial percentage of the total number of markets or submarkets for telecommunications services or facilities; and

"(2) has the ability, in a substantial percentage of such markets or submarkets, to raise or lower prices for such services (or for the use of such facilities) without significantly affecting the extent to which its customers rely upon its services or facilities, as a result of the absence of comparable alternative services or facilities offered by unaffiliated persons in such markets or submarkets.

"(c) Any person, including any Federal agency, may request the Commission to initiate proceedings for the classification of any interexchange carrier under subsection (a), and may petition the Commission to review the classification of any interexchange carrier made by the Commission under subsection (a).

"DEREGULATION OF CERTAIN SERVICE OFFERINGS; SEPARATE SUBSIDIARY REQUIREMENTS

"SEC. 214. (a)(1) No dominant carrier shall be subject to any regulatory authority of the Commission under this title—

"(A) other than any authority exercised by the Commission under this title which is applicable to all carriers;

"(B) other than any authority of the Commission under this title which is applicable to fully separated subsidiaries; and

"(C) except as otherwise provided in this title;

in connection with the offering by such dominant carrier of any telecommunications service or class of telecommunications services (other than basic telecommunications service) in a particular market or submarket if such dominant carrier complies with the provisions of paragraph (2).

"(2) A dominant carrier may offer any telecommunications service or class of telecommunications services (other than basic telecommunications service) in a particular market or submarket under paragraph (1) if such dominant carrier—

"(A) establishes 1 or more fully separated subsidiaries in accordance with this section and section 219 to offer such service or class of services in such market or submarket; and

"(B) utilizes, in connection with the offering of such service or class of services, a cost accounting system which carries out the requirements established in section 219(d) by ensuring that the costs of any such fully separated subsidiary which relate to the offering of such service or class of services (including any such costs which are incurred before the date of the enactment of the Telecommunications Act of 1980) are not subsidized by revenues of such dominant carrier from the provision of telecommunications services, facilities, or products which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission.

"(3)(A) In the case of any telecommunications service, facility, or product, or any service, facility, or product incidental to telecommunications, which a dominant carrier or any affiliated organization may provide in accordance with section 218, if such dominant carrier or affiliated organization ceases to be subject to the applicable terms and conditions of the consent judgment or decree specified in section 218(a) which are affected by the provisions of section 218, then such dominant carrier and any affiliated organization shall engage in the offering of such service, facility, or product only—

"(i) in a manner which complies with the requirements of paragraph (2)(B); and

"(ii) through the establishment of 1 or more fully separated subsidiaries in accordance with this section and section 219.

"(B) The offering of such service, facility, or product shall not be subject to any other regulatory authority of the Commission under this title or to the regulatory authority of any State commission, except that such offering shall be subject to—

"(i) that regulatory authority of the Commission which is applicable to all carriers; and

"(ii) the requirements applicable to fully separated subsidiaries.

"(4) Upon the establishment by the Commission of the system of accounting methods, procedures, and techniques which is required in section 254, the requirements of paragraph (2)(B) shall be met only through the maintenance of such system by the dominant carrier and any affiliated organization involved (or by any other interexchange carrier, in the case of an assertion by the Commission of its regulatory authority under subsection (b)(1) with respect to such carrier).

"(b)(1) In any case in which any amendment made to this Act by the Telecommunications Act of 1980, or any action taken by the Commission under this title, has the effect of eliminating any regulatory authority of the Commission under this title with respect to the offering of any telecommunications service or facility, or any class of telecommunications services or facilities, in a particular market or submarket by any carrier, the Commission shall have authority to assert such regulatory authority through the imposition of rules and requirements applicable to any dominant carrier or any other interexchange carrier with respect to the continued offering of such service or facility, or such class of services or facilities, in such market or submarket if the Commission determines that—

"(A) effective competition does not or will not exist in such market or submarket; or

"(B) the imposition of such rules and requirements by the Commission is necessary to serve the public convenience and necessity.

"(2) In any case in which the Commission asserts its regulatory authority through the imposition of rules and requirements upon any interexchange carrier (other than a dominant carrier) under paragraph (1), the Commission shall have authority to apply any of the requirements and other provisions of this title which specifically apply to dominant carriers to such interexchange carrier, to the extent necessary to carry out the purposes of this subsection.

"(3) The Commission may act under paragraph (1) upon its own motion or upon the motion of any person. Any such action by the Commission may be taken only after notice and opportunity for a hearing. In any proceeding under paragraph (1), the burden of proof with respect to the findings required in subparagraph (A) and subparagraph (B) of paragraph (1) shall be upon the Commission, or upon the petitioner in such proceeding in any case in which the Commission is acting upon the motion of such petitioner.

"(4)(A) The Commission may exercise the authority specified in paragraph (1), without making the determinations required in paragraph (1), with respect to the continued offering of any telecommunications service or facility, or any class of telecommunications services or facilities, in a particular market or submarket by any carrier, after notice and opportunity for an informal hearing, if the Commission determines that—

"(i)(I) there is an imminent risk that such service or facility, or such class of services or facilities, will cease to be available in such market or submarket; or

"(II) there is reasonable cause to believe that, as the result of any violation of this Act committed by a fully separated subsidiary, there is an imminent risk that a carrier will not be able to continue to engage in the offering of such service or facility, or such class of services or facilities, in such market or submarket; and

"(ii) any such risk will be reduced or eliminated by the exercise of such authority by the Commission.

"(B) In any proceeding to review any action taken by the Commission under paragraph (1) which is based upon a determination made by the Commission under subparagraph (A), the provisions of section 706(2)(E) of title 5, United States Code, shall apply.

"(C) If the Commission exercises the authority specified in paragraph (1), after making a determination under subparagraph (A), then the Commission may exercise such authority for a period of not more than 1 year after the date on which such determination becomes final.

"(c)(1) For purposes of this section and section 218, a subsidiary of a dominant carrier or of any affiliated organization shall be considered to be a fully separated subsidiary if such dominant carrier or affiliated organization complies with the requirements established in section 219 and if such subsidiary—

"(A) is owned or controlled by, or under common ownership or control with, such dominant carrier or any affiliated organization;

"(B) does not have more than 1 member of the board of directors of such subsidiary who also is a member of the board of directors of such dominant carrier or any affiliated organization, or who also is an officer or employee of such dominant carrier or any affiliated organization, and does not have any officers or employees who also serve as officers or employees of such dominant carrier or any affiliated organization;

"(C) does not have less than 5 members serving on the board of directors of such subsidiary;

"(D)(i) maintains books, records, and accounts which are separate from books, records, and accounts maintained by such dominant carrier or any affiliated organization, and which identify any conduct of business specified in section 219(a)(1) with such dominant carrier and any affiliated organization; and

"(ii) in any case in which such subsidiary is not a publicly held corporation, prepares financial statements in a manner which is consistent with Federal financial reporting requirements applicable to publicly held corporations, except that the provisions of this clause shall not be construed (I) to subject such subsidiary to any filing requirements which are applicable to publicly held corporations under such Federal financial reporting requirements; or (II) to affect the manner in which such subsidiary is permitted to file returns for Federal income tax purposes;

"(E) does not have a financial structure in common with such dominant carrier or any affiliated organization;

"(F) does not own any facilities or other property in common with such dominant carrier or any affiliated organization; and

"(G) consistent with the provisions of section 219, carries out directly (or through unaffiliated persons or any other fully separated subsidiary) its own marketing, sales, maintenance, operations, manufacturing, development, and applied research relating to services, facilities, and products offered by such subsidiary, except that any institutional advertising carried out by such dominant carrier or any affiliated organization which is not specifically related to any service, facility, or product shall not be considered to be marketing carried out in common with the fully separated subsidiary.

"(2)(A) Except as provided in subparagraph (B) and subparagraph (D), if the Commission determines that—

"(i) any fully separated subsidiary fails to comply with any requirement established in paragraph (1) or in section 219;

"(ii) the dominant carrier involved fails to comply with any requirement established in section 219, and such failure to comply affects the activities of such fully separated subsidiary; or

"(iii) such dominant carrier, or any affiliated organization, conducts business with such fully separated subsidiary in a manner which violates section 219;

then the Commission (in addition to exercising any other remedial authority available to the Commission under this Act) may provide that any offering by such fully separated subsidiary of any telecommunications service, facility, or product, or any class of telecommunications services, facilities, or products, shall be subject to the regulatory authority of the Commission under this title.

"(B) If—

"(i) any failure of a fully separated subsidiary to comply with any requirement established in paragraph (1) or in section 219 relates only to the offering of a specific telecommunications service, facility, or product, or a specific class of telecommunications services, facilities, or products;

"(ii) any failure of the dominant carrier involved to comply with any requirement established in section 219, which affects the activities of such fully separated subsidiary, relates only to the offering of a specific telecommunications service, facility, or product, or a specific class of telecommunications services, facilities, or products; or

"(iii) the Commission determines that a dominant carrier or any affiliated organization fails to comply with the requirements of section 219 with respect to the offering of a specific telecommunications service, facility, or product, or a specific class of telecommunications services, facilities, or products;

then the Commission (in addition to exercising any other remedial authority available to the Commission under this Act) may provide that any offering by such fully separated subsidiary of the specific telecommunications service, facility, or product, or the specific class of telecommunications services, facilities, or products, shall be subject to the regulatory authority of the Commission under this title.

"(C) Any offering by a fully separated subsidiary which is made subject to the regulatory authority of the Commission pursuant to a determination made by the Commission under this paragraph shall continue to be subject to such regulatory authority until the Commission determines that there no longer exists a failure to comply with any requirement established in paragraph (1) or in section 219.

"(D) In any case in which a fully separated subsidiary offers any service, facility, or product incidental to telecommunications and—

"(i) such fully separated subsidiary fails to comply with any requirement established in paragraph (1) or in section 219;

"(ii) the dominant carrier involved fails to comply with any requirement established in section 219, and such failure to comply affects the activities of such fully separated subsidiary; or

"(iii) such dominant carrier, or any affiliated organization, conducts business with such fully separated subsidiary in a manner which violates section 219;

the Commission (in addition to exercising any other remedial authority available to the Commission under this Act) shall exercise the remedial authority established in subparagraph (E).

"(E)(i) In the case of any failure to comply or violation specified in subparagraph (D), the Commission shall—

"(I) require the fully separated subsidiary involved to cease the offering of the service, facility, or product involved until the Commission determines that there no longer exists a failure to comply with, or a violation of, the requirement involved; or

"(II) assess a forfeiture penalty of not more than $500,000 against the dominant carrier, affiliated organization, or fully separated subsidiary, as the case may be.

The penalty established in subclause (II) may be in addition to, or in lieu of, the remedy established in subclause (I), at the discretion of the Commission.

"(ii) In any case in which a dominant carrier, affiliated organization, or fully separated subsidiary is required to pay a forfeiture penalty under clause (i)(II), no deduction shall be allowed under subsection (a) of section 162 of the Internal Revenue Code of 1954 (relating to trade or business expenses) for the amount of such penalty.

"(F)(i) The Commission shall include in each annual report to the Congress made by the Commission under section 4(k) a detailed statement of any enforcement action taken by the Commission to carry out this paragraph during the year involved.

"(ii) The Commission shall conduct a study for the purpose of determining whether legislation authorizing the Commission to establish requirements under this paragraph relating to the structure or organization of dominant carriers, affiliated organizations, and fully separated subsidiaries is necessary to enable the Commission to carry out the purposes of this paragraph. The Commission shall include its findings and recommendations resulting from such study in the annual report made by the Commission under section 4(k) for the 5th year following the year in which the fully separated subsidiary initially established by a dominant carrier under subsection (a) commences the offering of services, facilities, or products.

"(d)(1) For purposes of this subsection:

"(A) The term 'employee' means any employee of a dominant carrier or affiliated organization.

"(B) The term 'regular employee' means any full-time or part-time employee whose employment is expected to be permanent and who is so classified as a regular employee.

"(C) The term 'transferred employee' means any employee transferred to a fully separated subsidiary by a dominant carrier or by any affiliated organization.

"(2) If a dominant carrier or any affiliated organization transfers an employee to a fully separated subsidiary, then such transferred employee shall not be deprived of his employment, salary or wages, or seniority rights during the 5-year period following the date of such transfer. The requirements of this paragraph shall continue to apply in any case in which the fully separated subsidiary retransfers such transferred employee to the dominant carrier or to any affiliated organization, except that any such retransfer shall not have the effect of extending the 5-year period specified in the preceding sentence.

"(3)(A) A transferred employee shall be entitled to receive payment (in addition to his regular salary or wages) from the fully separated subsidiary to which he is transferred for reasonable travel expenses and reasonable moving expenses incurred by him or any of his dependents if—

"(i) such transferred employee changes his domicile as a result of such transfer; and

"(ii) the distance between the new work location of such transferred employee and the former domicile of such transferred employee exceeds the distance between the former work place of such transferred employee and such former domicile by 35 miles or more.

"(B) If a collective bargaining agreement applicable to a transferred employee provides transfer benefits which differ from the benefits available to such transferred employee under subparagraph (A), then such transferred employee may select the benefits which shall apply. Such selection shall be made through notice to the dominant carrier or any affiliated organization involved before the end of the 10-day period following the date on which such transferred employee receives notice of his transfer to a fully separated subsidiary. If such transferred employee does not furnish such notice before the end of such 10-day period, then benefits under the collective bargaining agreement shall apply.

"(4) Any pension benefits, health or disability benefits, death benefits, or insurance benefits to which a transferred employee is entitled shall not be restricted, limited, or reduced as a result of his transfer to a fully separated subsidiary, except that the requirements of this paragraph may be superseded by the terms of any collective bargaining agreement between such fully separated subsidiary and any labor organization representing the employees of such fully separated subsidiary.

"(5)(A) Except as provided in subparagraph (B), any collective bargaining agreement between a dominant carrier, or any affiliated organization, and any labor organization representing the employees of such dominant carrier or affiliated organization shall continue to apply to any transferred employee during the complete term of such agreement.

"(B) A fully separated subsidiary, or any person who owns or controls such fully separated subsidiary, and any labor organization representing the employees of such fully separated subsidiary may enter into a collective bargaining agreement at any time after the establishment of such fully separated subsidiary. Any such agreement—

"(i) shall supersede the terms and application of any collective bargaining agreement specified in subparagraph (A); and

"(ii) shall supersede the requirements of this subsection to the extent such requirements otherwise would apply to such fully separated subsidiary.

"(6)(A) Except as provided in subparagraph (B), if a regular employee is transferred to a fully separated subsidiary by a dominant carrier or by any affiliated organization, and such regular employee is discharged for other than cause during the 7-year period following the date of such transfer, then such regular employee shall be entitled to receive compensation from such fully separated subsidiary in an amount which is not less than the amount of compensation such regular employee would have been entitled to receive from such dominant carrier or such affiliated organization if such dominant carrier or such affiliated organization discharged such regular employee for other than cause immediately before the date of such transfer.

"(B) If a collective bargaining agreement between a fully separated subsidiary and any labor organization representing the employees of such fully separated subsidiary is in effect at the time a regular employee is discharged in the manner specified in subparagraph (A), and such collective bargaining agreement applies to such regular employee and provides benefits which differ from the benefits available to such regular employee under subparagraph (A), then such regular employee may select the benefits which shall apply. Such selection shall be made through notice to the fully separated subsidiary before the end of the 10-day period following the date of such discharge. If such regular employee does not furnish such notice before the end of such 10-day period, then benefits under the collective bargaining agreement shall apply.

"(7) If any transferred employee is the subject of a layoff during the 7-year period following the date of the transfer of such transferred employee to a fully separated subsidiary, then such transferred employee shall have the first right of rehire in his occupational specialty (or its equivalent) during the 2-year period following the date of the layoff of such transferred employee, except that such right shall not apply unless such transferred employee is physically able, and equipped by training and experience, to perform the duties of the work available. Such fully separated subsidiary shall maintain lists of employees who have been separated from employment through layoffs. Such lists shall contain sufficiently detailed information to enable such fully separated subsidiary to comply with the requirements of this paragraph.

"(8) A dominant carrier or any affiliated organization shall not reduce the salary or wages of a regular employee, or separate such regular employee from employment through layoff or termination, during the 6-month period immediately before the establishment of a fully separated subsidiary by such dominant carrier or by such affiliated organization unless—

"(A) such regular employee consents to such action; or

"(B) such action is not related to the establishment of such fully separated subsidiary.

"(9) The provisions of this subsection shall not apply to any employee who is transferred to a fully separated subsidiary after the 7-year period following the date of the establishment of such fully separated subsidiary.

"(10) Nothing in this subsection shall be construed to restrict, limit, or eliminate the authority of a dominant carrier, an affiliated organization, or a fully separated subsidiary to discharge an employee, or take any disciplinary or other action against an employee, for cause.

"(11) For purposes of the enforcement or protection of rights, privileges, and immunities granted or guaranteed in this subsection, employees shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by such Act. The National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act.".

(b)(1) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by redesignating section 214 as section 215, and by transferring such section to appear immediately after section 214 of the Communications Act of 1934, as added in subsection (a).

(2)(A) Section 215(a) of the Communications Act of 1934, as so redesignated in paragraph (1), is amended to read as follows:

"SEC. 215. (a)(1)(A) Except as provided in subparagraph (B) and subparagraph (C), no dominant carrier or other regulated carrier shall—

"(i) construct any new line or any extension of a line;

"(ii) acquire or operate any such line or extension; or

"(iii) transmit any telecommunications through the use of any such line or extension;

unless such dominant carrier or other regulated carrier submits a petition to the Commission for such purpose and the Commission determines that any such action by such dominant carrier or other regulated carrier serves the present or future public convenience and necessity.

"(B) A determination made by the Commission under subparagraph (A) shall not be required for the construction, extension, acquisition, or operation of—

"(i) any line located in a single local exchange area (unless such line constitutes part of a line used to provide interexchange telecommunications service);

"(ii) any local, branch, or terminal line which is not more than 10 miles in length;

"(iii) any line acquired under section 276 or section 277; or

"(iv) any line which is constructed, extended, acquired, or operated in connection with the offering by the dominant carrier or other regulated carrier of any telecommunications service or class of telecommunications services which is not subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission.

"(C) The Commission, upon the receipt of an appropriate request, shall have authority to authorize temporary or emergency telecommunications service, or the supplementing of existing telecommunications facilities, without regard to the other provisions of this section.

"(2)(A) Except as provided in subparagraph (C) and subparagraph (D), if a dominant carrier or other regulated carrier (other than a regulated carrier which is subject to the regulatory authority of the Commission under section 212(a)(5) and which is eligible to submit a petition under paragraph (3)) seeks—

"(i) to discontinue or reduce the offering of any telecommunications service or facility, or class of telecommunications services or facilities, which is being offered by such dominant carrier or other regulated carrier in a particular market or submarket on the day before the date of the enactment of the Telecommunications Act of 1980, and which (on such day) was subject to the regulatory authority of the Commission under this title; or

"(ii) to continue the offering of such service or facility, or class of services or facilities (other than basic telecommunications service), in all such markets or submarkets or in any particular market or submarket—

"(I) subject only to that regulatory authority of the Commission under this title which is applicable to all carriers; and

"(II) in the case of a dominant carrier, subject to the requirements applicable to fully separated subsidiaries;

then such dominant carrier or other regulated carrier may submit a petition for such purpose to the Commission.

"(B) The Commission shall grant any petition submitted under subparagraph (A) unless the Commission determines that—

"(i) the dominant carrier or other regulated carrier involved has failed to meet its burden of proof that effective competition exists in the market or submarket involved; or

"(ii) the granting of such petition will not serve the present or future public convenience and necessity.

"(C) The Commission, upon the receipt of an appropriate request, shall have authority to authorize temporary or emergency discontinuance, reduction, or impairment of telecommunications service, or partial discontinuance, reduction, or impairment of such service, without regard to the other provisions of this section.

"(D) An international carrier shall not be entitled to submit any petition under subparagraph (A)(ii).

"(3)(A) If any regulated carrier which is subject to the regulatory authority of the Commission under section 212(a)(5) seeks—

"(i) to discontinue or reduce the offering of any telecommunications service or facility, or class of telecommunications services or facilities, which was being offered by such regulated carrier in a particular market or submarket on the day before the date of the enactment of the Telecommunications Act of 1980, and which (on such day) was subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission; or "(ii) to continue the offering of such service or facility, or class of services or facilities, in such market or submarket subject only to that regulatory authority of the Commission under this title which is applicable to all carriers;

then such regulated carrier may submit a petition for such purpose to the Commission during the 1-year period following the date of the enactment of the Telecommunications Act of 1980. In any case in which a regulated carrier submits such a petition, such regulated carrier shall provide written notice of the submission of such petition to each user of the services or facilities of such regulated carrier. After such period, any such carrier shall be required to submit any such petition under paragraph (2) in the same manner as any other regulated carrier.

"(B) The Commission shall grant any petition submitted under subparagraph (A) unless the Commission determines that the granting of such petition will not serve the present or future public convenience and necessity.

"(C)(i) The Commission shall take action with respect to any petition submitted under subparagraph (A) not later than 90 days after notice is published in the Federal Register of receipt of such petition by the Commission, except that the Commission may extend such period for 1 period of 90 days if the Commission considers such extension to be necessary for the disposition of the petition.

"(ii) If the Commission fails to take final action with respect to any petition submitted by a regulated carrier under subparagraph (A) before the end of the applicable period under clause (i), then such petition shall be deemed to have been granted by the Commission.

"(4) Nothing in this section shall be construed to require authorization by the Commission for any installation, replacement, or other change in plant, operation, or equipment (other than new construction) which will not impair the adequacy or quality of telecommunications service provided by the dominant carrier or other regulated carrier involved.

"(5) For purposes of this subsection, the term 'line' means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by connection of 2 or more existing channels.".

(B) Section 215(b) of the Communications Act of 1934, as so redesignated in paragraph (1), is amended—

(i) by striking out "for any such certificate" and inserting in lieu thereof "under subsection (a)"; and

(ii) by inserting after "service is proposed" the following: "(or in which the dominant carrier or other regulated carrier involved proposes to continue the offering of telecommunications service in accordance with subsection (a)(2)(A)(ii) or subsection (a)(3)(A)(ii), as the case may be)".

(C) Section 215(c) of the Communications Act of 1934, as so redesignated in paragraph (1), is amended by striking out the first sentence thereof and inserting in lieu thereof the following new sentences: "The Commission shall have authority—

"(1) to grant any petition submitted under subsection (a)(1)(A), to refuse to grant such a petition, or to grant such a petition for only a portion of the line involved, for only a portion of the extension of such line, for only a portion of the proposed telecommunications service involved, or for only a partial exercise of the right or privilege sought in such petition; and

"(2) to grant any petition submitted under subsection (a)(2)(A) or subsection (a)(3)(A), to refuse to grant such a petition, or to grant such a petition for only a portion of the discontinuance or reduction of telecommunications service involved, or for only a partial exercise of the right or privilege sought in such petition.

The Commission, in granting any such petition, may impose such terms and conditions as in its judgment the public convenience and necessity may require.".

(D) The second sentence of section 215(c) of the Communications Act of 1934, as so redesignated in paragraph (1), is amended—

(i) by striking out "issuance of such certificate" and inserting in lieu thereof "approval of any such petition by the Commission";

(ii) by striking out "carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier involved";

(iii) by striking out "approval other than such certificate" and inserting in lieu thereof "any additional approval by the Commission";

(iv) by striking out "contained in or attached to the issuance of such certificate" and inserting in lieu thereof "imposed by the Commission"; and

(v) by striking out "service" and inserting in lieu thereof "telecommunications service (or with the offering of telecommunications service in accordance with subsection (a)(2)(A)(ii) or subsection (a)(3)(A)(ii), as the case may be)".

(E) Section 215 of the Communications Act of 1934, as so redesignated in paragraph (1), is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Any interexchange carrier which is not otherwise subject to the regulatory authority of the Commission under this title with respect to the offering of any telecommunications service or facility, or class of telecommunications services or facilities, shall—

"(1) submit written notice to the Commission not later than the date on which such carrier commences the offering of such service or facility, or such class of services or facilities; and

"(2) submit written notice to the Commission not later than 90 days before such carrier discontinues or reduces the provision of such service or facility, or such class of services or facilities.".

(F) Section 215(e) of the Communications Act of 1934, as so redesignated in paragraph (1) and subparagraph (E), is amended—

(i) by striking out "carrier" the first, third, and last places it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier"; and

(ii) by striking out "a common" and inserting in lieu thereof "such a".

(c)(1) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 215, as so redesignated in subsection (b)(1), the following new section:

"REQUIREMENTS APPLICABLE TO FURNISHING OF SERVICES AND FACILITIES

"SEC. 216. (a) A dominant carrier and any other regulated carrier—

"(1) shall furnish interexchange telecommunications services or facilities which are subject to the regulatory authority of the Commission under this title if a reasonable request is made for such services or facilities;

"(2) may not discriminate with respect to the rates, terms, and conditions for such services or facilities; and

"(3) may not establish or maintain any unreasonable or anticompetitive restriction relating to the furnishing, resale, or sharing of such services or facilities.

"(b) A dominant carrier, any other regulated carrier, and an intraexchange carrier—

"(1) shall establish interconnection of its tariffed services with any interexchange carrier if a reasonable request is made for such interconnection;

"(2) shall establish interconnection—

"(A) with any telecommunications facility or private telecommunications system which meets such uniform, minimum, technical standards as the Commission may establish by rule; and

"(B) with any terminal equipment or terminal device which is owned or leased by a customer of such dominant carrier, regulated carrier, or intraexchange carrier and which meets such standards as the Commission may establish under section 211(a)(6)(B); and

"(3) may not discriminate in an unreasonable or anticompetitive manner among interexchange carriers or other customers with respect to the rates, terms, and conditions for interconnection.

"(c) Each common carrier, other than a dominant carrier or regulated carrier subject to subsection (b), shall establish interconnection—

"(1) with any private telecommunications system or telecommunications facility which meets such uniform, minimum, technical standards as the Commission may establish by rule; and

"(2) with any terminal equipment or terminal device which is owned or leased by a customer of such carrier and which meets such standards as the Commission may establish under section 211(a)(6)(B).

"(d) The Commission shall have authority—

"(1) to specify or to approve the manner, rates, terms, and conditions for the provision by any dominant carrier, or any other regulated carrier, of interexchange telecommunications services or facilities which are subject to regulation by the Commission under this title to other carriers or customers of such dominant carrier or other regulated carrier;

"(2) to specify or to approve the manner, rates, terms, and conditions for interconnection between interexchange telecommunications services or facilities and intraexchange telecommunications services or facilities;

"(3) to specify or to approve the manner of interconnection between the regulated telecommunications services and facilities of a dominant carrier, any other regulated carrier, or an intraexchange carrier and—

"(A) any telecommunications facility or private telecommunications system which meets such uniform, minimum, technical standards as the Commission may establish by rule; and

"(B) any terminal equipment or terminal device which is owned or leased by a customer of such dominant carrier, regulated carrier, or intraexchange carrier and which meets such standards as the Commission may establish under section 211(a)(6)(B); and

"(4) to prohibit discrimination specified in subsection (b)(3) by dominant carriers, regulated carriers, or intraexchange carriers.

"(e) The Commission may reduce or eliminate duties imposed upon common carriers by subsection (c) to the extent necessary to carry out the purposes of this title. The provisions of subsection (c) shall not be construed to grant the Commission any authority to review or establish any rates, terms, or conditions applicable to interconnection.".

(2) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(A) by redesignating subsection (a) of section 201 as subsection (f) of section 216 of the Communications Act of 1934, as added in paragraph (1), and by transferring such subsection to appear immediately after subsection (e) of section 216 of the Communications Act of 1934, as so added; and

(B) by redesignating subsection (b) of section 201 as subsection (g) of section 216 of the Communications Act of 1934, as added in paragraph (1), and by transferring such subsection to appear immediately after subsection (f) of section 216 of the Communications Act of 1934, as so redesignated and transferred in subparagraph (A).

(d) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) by redesignating section 202 as section 217, and by transferring such section to appear immediately after section 216 of the Communications Act of 1934, as added in subsection (c)(1); and

(2) by inserting after section 217, as so redesignated in paragraph (1), the following new sections:

"FURNISHING OF CERTAIN SERVICES, FACILITIES, AND PRODUCTS BY DOMINANT CARRIERS

"SEC. 218. (a)(1) Notwithstanding the terms and conditions of any consent judgment or decree entered into before the date of the enactment of the Telecommunications Act of 1980, and subject to the requirements of this section, any dominant carrier which is subject to such judgment or decree, and any affiliated organization, may provide any service, facility, or product which is not subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission and which is—

"(A) a telecommunications service, facility, or product; or

"(B) a service, facility, or product incidental to telecommunications.

"(2)(A)(i) Notwithstanding any other provision of this Act, and except as provided in clause (ii), no dominant carrier or affiliated organization (including any fully separated subsidiary of such dominant carrier) may provide (within any area in which such dominant carrier is providing intraexchange telecommunications service) any alarm service, cable service, mass media service, or mass media product through any facility which is owned or controlled by such dominant carrier, affiliated organization, or fully separated subsidiary.

"(ii) The provisions of this paragraph shall not be construed to prohibit any dominant carrier, any affiliated organization, or any fully separated subsidiary of such dominant carrier from—

"(I) leasing or otherwise providing facilities for the provision of any alarm service, cable service, mass media service, or mass media product (in accordance with subsection (b)) to any person who is not affiliated with such dominant carrier, affiliated organization, or fully separated subsidiary;

"(II) providing any broadband telecommunications service which does not involve program origination or mass media service; or

"(III) transmitting television or radio broadcasting signals as a carrier (which does not include the provision of cable service).

"(B) In any case in which any dominant carrier, any affiliated organization, or any fully separated subsidiary of such dominant carrier provides facilities for the provision of any mass media service or mass media product, such dominant carrier, affiliated organization, or fully separated subsidiary shall make such facilities available on a nondiscriminatory basis to any person who originates or otherwise provides any mass media service or mass media product and who makes a reasonable request for the use of such facilities.

"(b)(1) If a dominant carrier or any affiliated organization seeks to engage in the offering of any service, facility, or product incidental to telecommunications in accordance with subsection (a), then such dominant carrier or affiliated organization shall engage in the offering of such service, facility, or product only—

"(A) in a manner which complies with the requirements of section 219(d); and

"(B) through the establishment (in accordance with section 214 and section 219) of 1 or more fully separated subsidiaries.

"(2) The offering of such service, facility, or product shall not be subject to any other regulatory authority of the Commission under this title or to the regulatory authority of any State commission, except that such offering shall be subject to—

"(A) that regulatory authority of the Commission which is applicable to all carriers; and

"(B) the requirements applicable to fully separated subsidiaries.

"(3) If such dominant carrier or affiliated organization ceases to be subject to the applicable terms and conditions of the consent judgment or decree specified in subsection (a), then the provisions of section 214(a)(3) shall apply to such dominant carrier or affiliated organization.

"(c) Nothing in any amendment made to this Act by the Telecommunications Act of 1980 (other than the provisions of subsection (a)(2)(A)(i) of this section) shall be construed to affect—

"(1) the authority of the Commission to establish rules or requirements relating to the offering of cable service by intraexchange carriers (or any entity affiliated with any such carrier) directly to subscribers located in their service areas; or

"(2) any rules of the Commission, relating to the offering of such service, which are in effect on the date of the enactment of the Telecommunications Act of 1980.

"(d)(1) Except as provided in paragraph (2) and in subsection (a), the provisions of this section shall not be construed to limit or restrict the manner in which, or the extent to which, any dominant carrier or affiliated organization which is subject to the consent judgment or decree specified in subsection (a)(1) is permitted to engage in, or is engaging in, any activity in accordance with the terms of such judgment or decree on the date of the enactment of the Telecommunications Act of 1980.

"(2) This subsection shall not be construed to authorize or permit such dominant carrier or affiliated organization to offer any service, facility, or product incidental to telecommunications—

"(A) except to the extent, and in the manner, such offering is authorized or permitted by any other provision of this section; and

"(B) except for any terminal equipment or terminal device which is described in section 219(f)(4)(A), and which is regulated by the Commission or by any State commission in a manner consistent with section 231(a)(3).

"(e) For purposes of this section:

"(1) The term 'alarm service' means the provision to the public of any intrusion alarm service or any fire alarm service, or both, by any person.

"(2) The term 'cable service' means the retransmission of any television or radio broadcasting signal, or program origination, for distribution by cable or any other closed transmission medium to multiple subscribers who pay to receive such service.

"(3) The term 'mass media' includes, but is not limited to, television and radio broadcasting, pay television, and printed or electronic publications (including newspapers, periodicals, and any service or product like or similar to all or part of the function of a newspaper or periodical or any portion of a newspaper or periodical). Such term does not include telephone number or address listings and directory assistance (limited to telephone number, address, and business category), weather or time information, or data retrieval services which do not provide any information which is like or similar to information provided by newspapers, periodicals, or television and radio broadcasting. The Commission shall have authority to determine in disputed cases whether any proposed service or product is a mass media service or product.

"(4) The term 'program origination' means the distribution of any television or radio program (including news, public affairs, entertainment, sports, educational programs, or religious affairs) by any person who may exercise control over the content or source of such program.

"REGULATION OF TRANSACTIONS BETWEEN DOMINANT CARRIERS AND FULLY SEPARATED SUBSIDIARIES

"SEC. 219. (a)(1) Any conduct of business between any dominant carrier or affiliated organization and any fully separated subsidiary shall be on a fully auditable and compensatory basis, and shall be subject to the requirements established in paragraph (4), subsection (f)(2)(C), subsection (f)(2)(D), and subsection (f)(2)(F). Such conduct of business shall be pursuant to contract and shall be reported to the Commission under such rules as the Commission determines necessary. The Commission shall make such contracts, or portions of contracts, available for public inspection to the extent necessary to ensure proper enforcement of this section.

"(2) The provisions of paragraph (1) shall not require any fully separated subsidiary or affiliated organization to furnish any telecommunications service, facility, product, subassembly, or component, or any service, facility, or product incidental to telecommunications, to any unaffiliated person, except as may be required under paragraph (4), subsection (f)(2)(C), or subsection (f)(2)(D).

"(3)(A) In addition to the requirements of section 216, the conduct of business by any dominant carrier (other than any person who owns or controls a dominant carrier) or any affiliated organization with an unaffiliated person shall be carried out in the same manner as such business is conducted between such carrier or affiliated organization and any fully separated subsidiary. The conduct of business between a dominant carrier (other than any person who owns or controls a dominant carrier) or any affiliated organization and any fully separated subsidiary shall not be based upon, or include, any preference or discrimination arising out of affiliation.

"(B) Nothing in this paragraph shall prohibit or otherwise restrict any dominant carrier, affiliated organization, or fully separated subsidiary from exercising its independent, ordinary business discretion in connection with business conducted with unaffiliated persons.

"(4) In addition to any other authority which the Commission may exercise under this Act, the Commission shall have authority to regulate any dominant carrier and its affiliated organizations (other than any fully separated subsidiary) for the purpose of—

"(A) dealing with anticompetitive practices between the fully separated subsidiary and the dominant carrier, its subsidiaries, or any affiliated organization; and

"(B) protecting users of telecommunications services which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission, in connection with dealings between such dominant carrier, and its affiliated organizations, and any fully separated subsidiary.

Nothing in this section shall be construed to limit the authority of the Commission under section 214(b)(1) or section 214(c)(2).

"(5) Except as provided in section 214(c)(1), nothing in this Act is intended to preclude corporate management from directing the operation of the dominant carrier, any affiliated organization, and any fully separated subsidiary, except that costs of such direction shall be properly allocated to the dominant carrier, affiliated organization, or fully separated subsidiary.

"(b)(1) The Commission shall establish procedures under this subsection with respect to the disclosure of information in accordance with paragraph (2) and consistent with subsection (a)(3), except that the requirements of this subsection also shall apply to any person who owns or controls a dominant carrier. Such procedures shall require each dominant carrier and affiliated organization (and any other regulated carrier, for purposes of subparagraph (C)) to maintain and file with the Commission a description of the operational protocols and technical interface requirements for connection with or use of any regulated telecommunications network, and to report regularly to the Commission—

"(A) any material change relating to such protocols or requirements which has been adopted or implemented, or for which a decision has been made to adopt or implement, including any information or technical requirements relating to the capacity of services, facilities, or products to function effectively and efficiently if interconnected with any telecommunications service or facility furnished by a dominant carrier;

"(B) any material change in any operational protocol or technical interface requirement not already disclosed under subparagraph (A) which will be required by the specific design or development of any service, facility, or product;

"(C) summaries of construction programs or activities intended to maintain, extend, or expand the regulated network services or facilities of a dominant carrier or any other regulated carrier which is subject to regulation under section 212(a)(4), if such information affects connection with or the functioning of the service offerings of competing carriers or persons seeking interconnection with any telecommunications service or facility furnished by such dominant carrier or other regulated carrier;

"(D) similar information relating to any regulated telecommunications network the disclosure of which the Commission determines to be necessary on its own initiative or in response to a petition submitted by any interested person; and

"(E) other information regarding any regulated telecommunications network of a dominant carrier which affects the capacity of services, facilities, or products to function effectively and efficiently if interconnected with such network.

"(2) In any case in which a submission to the Commission is required under paragraph (1), any person may obtain the information which is the subject of such submission from the Commission upon reasonable request and payment of reasonable copying and processing fees, unless the Commission, after consultation with the agencies designated in Executive Order No. 12046 (March 27, 1978; 43 Federal Register 13349), determines that the furnishing of such information would be detrimental to the national defense and security or to the emergency preparedness of the Nation. Any such request for information shall be subject to the provisions of section 552 of title 5, United States Code.

"(3) The Commission also shall establish procedures prohibiting the disclosure by a dominant carrier of any commercial information acquired in its provision of telecommunications services which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission, which would be of value to the fully separated subsidiary or to any unregulated entity, except that the Commission may require that specific categories of such information, such as directory listings, shall be made available to all parties, including any fully separated subsidiary, unregulated entities, and unaffiliated persons, at the same time, at the same rates, and on the same terms and conditions.

"(c) Any person who seeks to obtain any accounting information (including any related report or memorandum) which is prepared by any dominant carrier or affiliated organization in compliance with the requirements of this section, or in compliance with any other provision of this Act added by the amendments made by the Telecommunications Act of 1980, may petition the Commission for the issuance of an order requiring such dominant carrier or affiliated organization to disclose such information. The Commission shall issue such order upon a proper showing by such person that there is good cause for the issuance of such an order, such as reason to believe that a violation of section 254 has occurred. If such accounting information is an agency record in the possession or control of the Commission, and any person seeks to obtain such accounting information from the Commission, such person may request the disclosure of such information in accordance with section 552 of title 5, United States Code.

"(d) No dominant carrier or affiliated organization may directly or indirectly assign any costs (including costs incurred before the date of the enactment of the Telecommunications Act of 1980, and including costs associated with research and development) in violation of subsection (e)(1)(A) or section 254, including any assignment of costs to the expenses or rate base of such dominant carrier, if such costs properly should be assigned to any fully separated subsidiary of such dominant carrier or to activities of the dominant carrier or any affiliated organization which benefit any fully separated subsidiary. The Commission shall have the authority to carry out the provisions of this subsection and the provisions of section 254, including the authority to investigate any transaction or assignment of costs.

"(e)(1) During the transition period established in subsection (f), and before any subsidiary of a dominant carrier shall be considered a fully separated subsidiary for purposes of this Act, the dominant carrier shall file with the Commission a plan demonstrating that—

"(A) the dominant carrier and any affiliated organization have an accounting system which ensures a complete separation between—

"(i) all costs related to services, facilities, and products which are developed, manufactured, or offered by such dominant carrier or any affiliated organization (other than the costs of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization); and

"(ii) all costs of any fully separated subsidiary, including those related to services, facilities, and products which are developed, manufactured, or offered by any fully separated subsidiary of a dominant carrier, or of any affiliated organization, or as the result of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization;

"(B) such accounting system is established and maintained in a manner which ensures compliance with subsection (a)(1);

"(C) the proposed fully separated subsidiary complies with the requirements of section 214(c)(1); and

"(D) the assets, including capital, proposed for transfer to the proposed fully separated subsidiary have been fairly and properly valued.

The valuation specified in subparagraph (D) shall be binding upon the States upon approval of such plan by the Commission.

"(2)(A)(i) Not later than 180 days after the filing of such plan, the Commission shall issue an order announcing its approval or disapproval of such plan, stating the specific aspects of such plan which violate the provisions of this Act or the rules of the Commission. The Commission, before issuing such order, shall publish notice of the receipt of such plan and shall provide an opportunity for the submission of public comments regarding such plan during such 180-day period. The Commission, during such 180-day period, shall in a timely manner seek to obtain the opinion of the Attorney General of the United States regarding all aspects of such plan. The Commission shall not have any authority to extend such 180-day period for the purpose of receiving public comments or for any other purpose.

"(ii) In the case of disapproval by the Commission, the dominant carrier then may file an amended plan modifying the original plan to correct those aspects of such plan cited by the Commission as violating the provisions of this Act or the rules of the Commission. The Commission shall issue an order, not later than 60 days after the filing of such amended plan, approving such amended plan if it corrects such aspects. The Commission, before issuing such order, shall publish notice of the receipt of such amended plan and shall provide an opportunity for the submission of public comments regarding such amended plan during such 60-day period.

"(B) Failure of the Commission to issue an order under this paragraph before the end of the applicable time period shall constitute approval of the plan or amended plan involved.

"(3) After approval of any plan or amended plan under paragraph (2), a dominant carrier—

"(A) shall notify the Commission with respect to any minor revision of, or addition to, such plan, and with respect to any minor transfer of assets, for review by the Commission to ensure that such revision, addition, or transfer complies with the requirements of paragraph (1); and

"(B) shall submit any significant revision of, or addition to, such plan, and any significant transfer of assets, to the Commission for approval in accordance with paragraph (1) and paragraph (2) before carrying out such proposed revision, addition, or transfer.

The requirements of this paragraph shall apply during and after the transition period established in subsection (f).

"(f)(1) Subject to the provisions of section 214 and section 218, a fully separated subsidiary of a dominant carrier may offer any telecommunications service, facility, or product (other than basic telecommunications service), and any service, facility, or product incidental to telecommunications, as provided in this section under the conditions specified in paragraph (2).

"(2)(A) Not later than 4 years after the date of the enactment of the Telecommunications Act of 1980, the final assembly, including all aspects integral to final assembly, of any products which are required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons.

"(B) Not later than 4 years after such date of enactment, all applied research for, and development of, any telecommunications services, facilities, or products (including software), or services, facilities, or products (including software) incidental to telecommunications, which are required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons.

"(C) Not later than 6 years after such date of enactment, all subassemblies (including any subassembly-specific research and development) incorporated in any product incidental to telecommunications which is required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons, except that nothing in this subsection shall, at any time after such 6-year period, be construed to prohibit the fully separated subsidiary from acquiring any subassembly from an affiliated organization if such affiliated organization also sells the same type of subassemblies to unaffiliated persons at the same rates and on the same terms and conditions.

"(D) Not later than 8 years after such date of enactment, all components (including any component-specific research and development) incorporated in any telecommunications product, or any product incidental to telecommunications, which is required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons, except that nothing in this subsection shall, at any time after such 8-year period, be construed to prohibit a fully separated subsidiary from acquiring any component from an affiliated organization if such affiliated organization also sells the same type of components to unaffiliated persons at the same rates and on the same terms and conditions.

"(E) The time periods established in this paragraph shall be extended if the Commission determines that events beyond the control of the dominant carrier, or other good cause, warrant any such extension.

"(F)(i) During the applicable time period established in subparagraph (A), subparagraph (B), subparagraph (C), or subparagraph (D), the services or products (including any subassembly, basic component, and research and development) which are subject to any such time period—

"(I) shall be furnished to any fully separated subsidiary by a dominant carrier or affiliated organization for an amount which is fully compensatory and which is not less than the cost allocated to such service or product in connection with regulated activities carried out by the dominant carrier involved, except that in no case shall such amount be less than the rates for which similar services and products would be or are transferred in the marketplace between unaffiliated persons; and

"(II) any business which is conducted in connection with any such service or product shall be on the same terms and conditions under which similar services and products would be or are transferred in the marketplace between unaffiliated persons.

"(ii) In any case in which any conduct of business relating to any service or product specified in clause (i) is conducted at rates, terms, and conditions which are more favorable to the recipient than the rates, terms, and conditions under which similar services or products would be or are transferred in the marketplace between unaffiliated persons, the requirements of clause (i) shall not apply if the dominant carrier or affiliated organization which furnished the service or product involved demonstrates to the Commission that the rates, terms, and conditions involved in the conduct of business result from more efficient operation and lower direct costs, and do not result from the allocation of common overhead or other similar factors.

"(3)(A) The conditions and limitations specified in subparagraph (B) shall apply to dominant carriers, affiliated organizations, and fully separated subsidiaries.

"(B)(i) Any manufacturing facilities constructed for the provision of telecommunications services, facilities, or products, or services, facilities, or products incidental to telecommunications, which are required to be offered exclusively by a fully separated subsidiary commenced after approval of the plan required in subsection (e)(1) shall be owned by a fully separated subsidiary.

"(ii) A fully separated subsidiary shall not provide terminal equipment or terminal devices during the 3-year period following the date of the enactment of the Telecommunications Act of 1980 unless the final assembly of such terminal equipment or terminal devices is performed by a fully separated subsidiary or acquired from unaffiliated persons.

"(iii) A fully separated subsidiary shall not provide any interexchange telecommunications services or facilities, which are in existence on the date of the enactment of the Telecommunications Act of 1980, or any interexchange telecommunications services or facilities which are essentially similar to services or facilities which are being offered on such date of enactment, during the 4-year period following such date of enactment unless the Commission determines in accordance with the provisions of section 215 that effective competition exists in the particular market or submarket in which any such interexchange telecommunications service or facility will be offered.

"(iv) Subject to the requirements of section 214, a dominant carrier, an affiliated organization, or a fully separated subsidiary shall not provide services, facilities, or products incidental to telecommunications (other than terminal equipment and terminal devices), unless the final assembly and any associated development (including software) essential to such provision is performed by a fully separated subsidiary or acquired from unaffiliated persons. Any research and development (including software) associated with any specific service, facility, or product commenced after the approval of the plan required in subsection (e)(1) shall be performed by a fully separated subsidiary or acquired from unaffiliated persons.

"(4) A dominant carrier may not offer any telecommunications services, facilities, or products subject to the regulatory authority of the Commission or of any State commission (other than basic telecommunications service, intraexchange telecommunications service, and any other service regulated by the Commission under section 214(b)(1)), except as follows:

"(A) terminal equipment and terminal devices of a type which are being offered by such dominant carrier on the date of the enactment of the Telecommunications Act of 1980, during—

"(i) the 4-year period following such date of enactment; or

"(ii) the period beginning on such date of enactment and ending on the date of the approval of the plan required in subsection (e)(1), if such period ends before the end of such 4-year period; and

"(B) interexchange telecommunications services and facilities until deregulated under section 215, except that no new class of interexchange telecommunications service shall be introduced under regulation after the 3-year period following such date of enactment.

"(g) The Commission shall not have any authority to establish any requirements relating to—

"(1) the structure or organization of any affiliated organization or fully separated subsidiary;

"(2) any activities of a dominant carrier or person who owns or controls a dominant carrier which this section, section 214, or section 218 requires to be conducted by a fully separated subsidiary; or

"(3) the conduct of business between any dominant carrier or affiliated organization and any fully separated subsidiary;

which are not consistent with any provision of this section, section 214, or section 218, which establishes requirements relating to such structure or organization or to such conduct of business.

"(h) Not later than 1 year after the date of the enactment of the Telecommunications Act of 1980, the Commission shall prescribe such rules as may be necessary to carry out the provisions of this section. The Commission shall have authority to exercise any enforcement authority established in this Act to carry out such provisions and such rules.

"DETERMINATION OF EFFECTIVE COMPETITION

"SEC. 220. For purposes of this part, a carrier shall be considered to be subject to effective competition with respect to any telecommunications services or facilities offered by such carrier in a particular market or submarket if there are available in such market or submarket reasonable alternatives to such services or facilities which are offered by unaffiliated persons and which are the same as, or substantially similar to, the telecommunications services or facilities offered by such carrier. The Commission, in determining whether reasonable alternatives are available in the relevant markets or submarkets, shall consider—

"(1) the number and size of unaffiliated persons providing such services or facilities;

"(2) the extent to which such services or facilities are available from unaffiliated persons in the relevant markets or submarkets; and

"(3) the ability of such unaffiliated persons to make such services or facilities readily available at comparable rates, terms, and conditions.

The Commission also shall take into account other indicators of the extent of competition.".

ACCESS FEES; NATIONAL TELECOMMUNICATIONS POOL; PROTECTIONS FOR RATE PAYERS; CARRIER LIABILITY

SEC. 3. (a) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 220, as added in section 2(d)(2), the following:

"PART B—ACCESS FEES; NATIONAL TELECOMMUNICATIONS POOL; PROTECTIONS FOR RATE PAYERS; CARRIER LIABILITY

"ESTABLISHMENT OF TRANSITIONAL JOINT BOARD

"SEC. 231. (a) Not later than 90 days after the date of the enactment of the Telecommunications Act of 1980, a transitional joint board shall be established in accordance with this section for the purpose of—

"(1) providing for an orderly transition to the system of intraexchange access fees established in section 233;

"(2) ensuring equitable economic treatment of subscribers to basic telecommunications service, and of interexchange carriers; and

"(3) providing for the orderly, phased removal of terminal equipment and terminal devices in use on such date of enactment from the rate bases of carriers.

"(b) The authority of the transitional joint board with respect to the functions established in this section shall supersede the authority of any joint board established under section 410 and in existence on the date of the enactment of the Telecommunications Act of 1980.

"(c) The transitional joint board shall be composed of—

"(1) 3 commissioners of the Commission, designated by the Commission; and

"(2) 2 State commissioners nominated in accordance with section 410(c) and approved in accordance with section 410(a).

"(d) The transitional joint board shall appoint and fix the pay of such officers, engineers, accountants, attorneys, inspectors, examiners, and other personnel as may be necessary to assist the transitional joint board in carrying out its functions under this section. The staff of the transitional joint board shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(e) The transitional joint board shall have authority to perform such acts, to establish such rules and regulations, and to issue such orders as are consistent with the provisions of this Act and as may be necessary to carry out its functions under this title. The transitional joint board shall—

"(1) have authority to make minor modifications under section 211(d)(3)(B) with respect to rules applicable to the establishment of local exchange boundaries which encompass parts of 2 or more standard metropolitan statistical areas, and boundaries for local exchange areas which include geographical areas in more than 1 State;

"(2) establish and implement rules for orderly, phased capital recovery and the orderly, phased removal of terminal equipment and terminal devices in use on the date of the enactment of the Telecommunications Act of 1980 from the rate bases of carriers, and for ensuring the continued availability of such equipment and devices to customers during an appropriate transition period;

"(3) establish and maintain formulas for determining the amounts and means necessary to fund the accounts of the National Telecommunications Pool, and to order and oversee the distribution of funds from the National Telecommunications Pool in accordance with subsection (d), subsection (e), and subsection (f) of section 233;

"(4) make such changes and modifications in jurisdictional separation and settlements procedures (established under section 276(c) and section 410(c) and in effect on the date of the enactment of the Telecommunications Act of 1980) as may be necessary or appropriate for the orderly transition to the system of intraexchange access fees established in section 233 to compensate equitably intraexchange carriers for the costs of distributing interexchange telecommunications through the use of the facilities of such intraexchange carriers;

"(5) determine at regular intervals the relative assignment by intraexchange carriers of costs of intraexchange telecommunications facilities which are not directly caused by the volume of interexchange telecommunications transmitted through the use of such facilities, to interexchange telecommunications services, to assure that interexchange carriers and other customers pay amounts which reflect the cost of using the facilities of intraexchange carriers, except that the total level of payments from interexchange carriers to intraexchange carriers pursuant to access fees and the National Telecommunications Pool shall not exceed the level of payments which exists on June 1, 1980, exclusive of any increases in direct costs or payments reflecting increases in relative usage;

"(6) furnish advice to the Commission with respect to determinations of the Commission regarding terms and conditions for equivalent access by interexchange carriers and other customers for interconnection with intraexchange telecommunications facilities, and regarding the manner of such interconnection; and

"(7) establish and implement an orderly transition which (A) provides for the termination of any imputation by State commissions of revenues from printed directory advertising to regulated carrier activities for ratemaking purposes; and (B) shall be consistent with the maintenance of reasonable and affordable rates for intraexchange telecommunications service.

"(f) The transitional joint board shall submit annual reports to each House of the Congress with respect to activities of the transitional joint board under this title.

"(g)(1) Any rulemaking or adjudication of the transitional joint board under this section shall be subject to chapter 5 of title 5, United States Code.

"(2) Any action taken by the transitional joint board under this section shall be considered to be a final action subject to appeal under subsection (a) of section 402, and subsections (c) through (j) of section 402.

"(h) Except as provided in subsection (c)(2), the provisions of section 410 shall not apply to the transitional joint board.

"(i) The transitional joint board shall terminate at the end of the 72-month period following the date of the enactment of the Telecommunications Act of 1980. Upon such termination, and subject to the provisions of section 252(b)(4), the powers and responsibilities of the transitional joint board shall be carried out by the Commission.".

(b) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) by redesignating section 203 as section 232, and by transferring such section to appear immediately after section 231, as added in subsection (a);

(2) by redesignating section 204 through section 207 as section 234 through section 237, respectively, and by transferring such sections to appear immediately after section 233, as added in subsection (d);

(3) by redesignating section 217 as section 238, and by transferring such section to appear immediately after section 237, as so redesignated in paragraph (2); and

(4) by redesignating section 208 and section 209 as section 239 and section 240, respectively, and by transferring such sections to appear immediately after section 238, as so redesignated in paragraph (3).

(c) Section 232(b)(2) of the Communications Act of 1934, as so redesignated in subsection (b)(1), is amended—

(1) by striking out the comma after "shown" and inserting in lieu thereof "(A)"; and

(2) by inserting before the period at the end thereof the following: "; and (B) prescribe a different charge for an interim period, but not for a longer period than 1 year beyond the time when the charge filed with the Commission would otherwise go into effect".

(d) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 232, as so redesignated in subsection (b)(1), the following new section:

"INTRAEXCHANGE ACCESS FEES

"Sec. 233. (a) It is the purpose of this section to establish a system of intraexchange access fees for the use of the services and facilities of intraexchange carriers by interexchange carriers and other customers and to modify the jurisdictional separation and settlements procedures established under section 276(c) and section 410(c) and in effect on the date of the enactment of the Telecommunications Act of 1980, in order to—

"(1) achieve equality of treatment among all interexchange carriers and other customers using the services and facilities of each intraexchange carrier through direct or indirect interconnection for the distribution of interexchange telecommunications and to prevent subsidies from intraexchange carrier activities to interexchange carrier activities;

"(2) assure that payments and assignments of costs relating to access to intraexchange telecommunications services and facilities by interexchange carriers and other customers are carried out in a manner which is open to public examination and which ensures accountability to the public;

"(3) achieve flexibility in accommodating changes in market conditions and technology;

"(4) establish incentives for efficient investment decisions and technological choices; and

"(5) ensure that intraexchange carriers are compensated equitably for the costs of distributing interexchange telecommunications through the use of intraexchange services and facilities in order to ensure the continued universal availability of basic telecommunications service provided by intraexchange carriers at reasonable and affordable rates.

"(b)(1) Subject to the provisions of subsection (c), each intraexchange carrier shall submit to the Commission a schedule of fees for the use of each of its basic switched services and facilities by all interexchange carriers and other customers which interconnect with such facilities. Provision of services and facilities by intraexchange carriers to interexchange carriers or other customers, and payment for such services and facilities, by interexchange carriers or other customers, shall be solely pursuant to schedules of access fees established under this section.

"(2) Each schedule of fees submitted by an intraexchange carrier under paragraph (1) shall consist of, and shall specifically identify—

"(A) all costs caused directly by interconnection and all costs caused directly by the volume of interexchange traffic, reflecting variances in the manner of interconnection and the services and facilities requested by and rendered to an interexchange carrier or other customer by such intraexchange carrier;

"(B) a portion of those other costs of intraexchange telecommunications services and facilities associated with both intraexchange telecommunications service and the distribution of interexchange telecommunications service by such intraexchange carrier, as determined under section 231(e)(5), except that amounts in excess of the cost of the use of intraexchange telecommunications facilities determined by the transitional joint board to be necessary to avoid substantial or undue rate increases shall be recovered by eligible carriers from the National Telecommunications Pool, and shall not be recovered by such carriers from access fees; and

"(C) any amount established and maintained under subsection (e)(1) and any amount established and maintained under subsection (e)(2).

"(3) Each schedule of fees shall include a certification by the intraexchange carrier submitting such schedule of fees that such intraexchange carrier is in compliance with the requirements of this section and section 216(b)(3).

"(4) Each schedule of fees shall take into account differences in the manner of interconnection and the related services requested by and rendered to different interexchange carriers and other customers by an intraexchange carrier, for the purpose of ensuring that such differences are reflected in the various levels of such fees.

"(5) Except as provided in section 231(e)(2), no carrier shall include in such schedule of fees any costs associated with the provision of any service, facility, or product which is not subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission.

"(6)(A) The Commission shall approve, disapprove, or modify any such schedule of fees to ensure that such fees are consistent with the provisions of this section. In the case of all schedules of fees which are submitted by an intraexchange carrier after the initial schedule of fees of such carrier is approved by the Commission, the Commission shall take final action under this paragraph not later than 180 days after the date of such submission.

"(B) The Commission, before approving any schedule of fees, shall take such action as may be necessary to verify that the intraexchange carrier involved is in compliance with the requirements of this section and section 216(b)(3). If the Commission determines that such intraexchange carrier is not in compliance with such requirements, then the Commission shall—

"(i) direct that such intraexchange carrier comply with such requirements not later than 1 year after the date of such determination; and

"(ii) establish an interim schedule of fees for use by such intraexchange carrier which is designed to ensure prompt compliance with such requirements.

"(c)(1) Any schedule of fees for access to any intraexchange telecommunications service or facility provided by any intraexchange carrier which, together with any affiliated intraexchange carrier, serves not more than 50,000 main stations and equivalent stations shall be subject to the jurisdiction of the State commission for the State in which the service area of such intraexchange carrier is located. Such State commission shall have authority to approve, disapprove, or modify such schedule of fees in accordance with this Act and rules established by the Commission. The authority and responsibilities of the Commission under subsection (b)(6)(B) shall apply to such State commission under this paragraph.

"(2) Any person may submit a petition to the Commission alleging that a State commission is not exercising its regulatory authority in accordance with this Act or rules established by the Commission. If the Commission determines that a proper showing has been made by such person, then the Commission, after consultation with such State commission, shall prescribe a schedule of fees which the Commission considers to be just and reasonable.

"(3)(A) The initial schedules of fees which are required to be established under subsection (b)(1) shall take effect at the end of the 3-year period following the date of the enactment of the Telecommunications Act of 1980. Before the effective date of such schedules, all charges or other forms of reimbursement for access by interexchange carriers and other customers to intraexchange telecommunications services and facilities shall be governed by tariffs or contracts in effect as of June 1, 1980, except that the Commission may modify any such tariff or contract if such modification is required to carry out the purposes of this Act.

"(B) During the period beginning on the date on which access fees first take effect under subparagraph (A) and ending at the end of the 6-year period following the date of the enactment of the Telecommunications Act of 1980, uniform adjustments shall be made—

"(i) in the relative allocation of the amount assigned by the transitional joint board to interexchange telecommunications services under section 231(e)(5) to be paid by different carriers and classes of service; and

"(ii) in the relative allocation of the total amount necessary annually for the account established in subsection (e)(3) to be paid by different carriers and classes of service.

Such adjustments shall be made to ensure that all carriers and other customers make an equitable and orderly transition from the level of reimbursements made as of the day before the date on which access fees first take effect under subparagraph (A) to the level of reimbursements which will be paid under subsection (b) and subsection (e).

"(d)(1) There hereby is established a National Telecommunications Pool, the administration of which shall be overseen by the transitional joint board.

"(2) The National Telecommunications Pool shall consist of the accounts specified in subsection (e).

"(e)(1)(A) The National Telecommunications Pool shall include an account consisting of the total amount determined by the transitional joint board to be needed annually by eligible intraexchange carriers to ensure that the costs of such carriers for the distribution of interexchange telecommunications service and intraexchange telecommunications service per main station or equivalent station which, in the aggregate, exceed 110 percent of the national average of such costs will not be borne directly by intraexchange rate payers or by access fees.

"(B) All interexchange carriers and other customers directly connecting to basic telecommunications service provided by intraexchange carriers shall make nondiscriminatory payments to such account based upon the annual ratio of the payments of each such carrier or other customer for such interconnection under subsection (b)(2)(A) and subsection (b)(2)(B) to the total of such payments by all such directly connecting interexchange carriers and other customers, pursuant to subsection (b)(2)(C). All traffic indirectly connecting to basic telecommunications service of an intraexchange carrier shall be assessed nondiscriminatory payments to such account in equivalent amounts for equivalent usage of such service.

"(C) Intraexchange carriers which, together with any affiliated intraexchange carriers, serve not more than 50,000 main stations and equivalent stations, and which certify to the transitional joint board that their costs for the distribution of interexchange telecommunications service and intraexchange telecommunications service per main station or equivalent station, in the aggregate, exceed 110 percent of the national average of such costs shall be eligible for payments from the account established in this paragraph and shall be entitled to receive payments for that portion of their costs which exceeds 110 percent of such national average. The transitional joint board shall have authority to designate by rule other intraexchange carriers with high costs for the distribution of intraexchange telecommunications service and interexchange telecommunications service for payments from such account, subject to such modifications as the transitional joint board considers appropriate.

"(2)(A) The National Telecommunications Pool also shall include an account to minimize disparities in charges for basic telecommunications service provided by carriers which arise due to greater costs of providing connecting links for such service to and from, or between, rural or other remote areas. The transitional joint board shall establish the total amount necessary annually for such account. All interexchange carriers and other customers directly connecting to basic telecommunications service provided by intraexchange carriers shall make nondiscriminatory payments to such account based upon the annual ratio of the payments of each such carrier or other customer for such interconnection under subsection (b)(2)(A) and subsection (b)(2)(B) to the total of such payments by all such directly connecting interexchange carriers and other customers, pursuant to subsection (b)(2)(C). All traffic indirectly connecting to basic telecommunications service of an intraexchange carrier shall be assessed nondiscriminatory payments to such account in equivalent amounts for equivalent usage of such service.

"(B) If such disparities in charges for basic telecommunications service would arise without payments from such account, the transitional joint board shall order payments to eligible carriers for such costs to achieve charges to customers which do not exceed 110 percent of the national average charge for comparable service.

"(3)(A) The National Telecommunications Pool also shall include an account consisting of the total amount needed annually by intraexchange carriers (as determined by the transitional joint board), in excess of revenues from intraexchange access fees and any payments from the account established in paragraph (1) or paragraph (2) to be collected by an intraexchange carrier, to provide for an orderly transition from the level of payment pursuant to jurisdictional separation and settlements procedures established under section 276(c) and section 410(c) and in effect on June 1, 1980, to the level of payment, based only upon costs, available to intraexchange carriers under the system of intraexchange access fees established in subsection (b)(2), for the purpose of avoiding substantial or undue increases in charges for basic telecommunications service provided by intraexchange carriers which are beyond the control of an intraexchange carrier and which are caused by such transition.

"(B) The transitional joint board shall impose surcharges sufficient to recover the total amount necessary annually for the account established in this paragraph upon—

"(i) all interexchange carriers and private telecommunications systems directly connecting to basic telecommunications service provided by intraexchange carriers, based upon the annual ratio of the payments of each such carrier or system for such interconnection under subsection (b)(2)(A) and subsection (b)(2)(B) to the total of such payments by all such interexchange carriers and systems; and

"(ii) all traffic indirectly connecting to basic telecommunications service of an intraexchange carrier in equivalent amounts for equivalent usage of such service.

The transitional joint board periodically shall order such payments to intraexchange carriers as may be necessary to carry out the purposes of the account established in this paragraph and the purposes of this section.

"(C) The transitional joint board shall establish and publish a plan for such transition and the operation of such account.

"(f)(1) The National Telecommunications Pool shall be administered in a manner which expedites the disbursement of funds from the National Telecommunications Pool to eligible carriers through the use of rules and procedures which eliminate burdens or delays in the certification or application process to the maximum extent practicable, and which permit disbursement decisions to be made on the basis of uniform, general, simplified standards of eligibility which are readily applied to the information and other data included in each application.

"(2) Payments from the National Telecommunications Pool to individual carriers ordered by the transitional joint board shall be subject to subsequent audit and adjustment by the transitional joint board to determine and to ensure that—

"(A) any certification or application is valid and based upon proper allocation of costs pursuant to guidelines established by the transitional joint board or the Commission, as the case may be;

"(B) such payments are used to carry out the purposes for which they were intended; and

"(C) such payments do not remove incentives for the efficient provision of basic telecommunications service, except that any adjustment based upon the factor established in this subparagraph shall be effective only on a prospective basis.

"(g) For purposes of this section, section 216, section 232, and section 254, any carrier which provides both interexchange and intraexchange telecommunications services and facilities shall be considered to be an interexchange carrier to the extent such carrier provides interexchange telecommunications services and facilities, and shall be considered to be an intraexchange carrier to the extent such carrier provides intraexchange telecommunications services and facilities.".

ORGANIZATION OF CARRIERS; FINANCIAL AND OTHER TRANSACTIONS

SEC. 4. (a) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 240, as so redesignated in section 3(b)(4), the following heading:

"PART C—ORGANIZATION OF CARRIERS; FINANCIAL AND OTHER TRANSACTIONS".

(b) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) by redesignating section 213 as section 251, and by transferring such section to appear immediately after the heading for part C of title II of the Communications Act of 1934, as added in subsection (a);

(2) by redesignating section 220 as section 252, and by transferring such section to appear immediately after section 251, as so redesignated in paragraph (1);

(3) by redesignating section 215 as section 253, and by transferring such section to appear immediately after section 252, as so redesignated in paragraph (2); and

(4) by striking out section 218.

(c) Section 252(b) of the Communications Act of 1934, as so redesignated in subsection (b)(2), is amended to read as follows:

"(b)(1) The transitional joint board shall establish and prescribe—

"(A) the classes of property used by any dominant carrier or other regulated carrier for the provision of telecommunications services which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission; and

"(B) the methods by which investments in such classes of property may be recovered.

"(2) The methods specified in paragraph (1)(B) may include capital recovery schedules or percentage depreciation schedules. Such methods shall—

"(A) provide for the full recovery of any unrecovered amount of invested capital not later than the end of the remaining life of the property involved;

"(B) permit not more than the full amount of invested capital to be recovered;

"(C) for property used by a regulated carrier, include, as an allowable operating expense for ratemaking purposes, depreciation computed under any accelerated methods selected by such regulated carrier, except that (i) the initial selection shall apply only to property placed in service on or after the first day of the first calendar year which begins after the date of the enactment of the Telecommunications Act of 1980; and (ii) any subsequent changes in such selection shall apply only to property placed in service on or after the date of such selection; and

"(D) for property already in service on the first day of the first calendar year which begins after the date of the enactment of the Telecommunications Act of 1980, include as an allowable operating expense for ratemaking purposes such amounts as may be necessary to recover all embedded invested capital through the use of the remaining life method of capital recovery.

"(3) Any determination of the remaining life of property under paragraph (2) shall take into consideration competition, changes in technology, and remaining economic life.

"(4) Upon the termination of the transitional joint board, the Commission shall refer matters arising under this subsection to a Federal-State Joint Board under section 410(c). The Commission and such Federal-State Joint Board shall have authority to establish, prescribe, implement, or change classes of property and methods of depreciation only in accordance with the foregoing provisions of this subsection.".

(d) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 253, as so redesignated in subsection (b)(3), the following new sections:

"ACCOUNTING SYSTEMS AND PRACTICES

"SEC. 254. (a) Each dominant carrier or other regulated carrier shall maintain a system of accounting methods, procedures, and techniques (including accounts and supporting records and memoranda) which shall be established and enforced by the Commission to ensure—

"(1) a proper allocation of all costs to and among telecommunications services, facilities, and products (and to and among classes of such services, facilities, and products) which—

"(A) are developed, manufactured, or offered by such dominant carrier or any affiliated organization; or

"(B) are developed, manufactured, or offered by any such regulated carrier or any affiliated organization and are subject to the regulatory authority of the Commission under this title; and

"(2) a complete separation between—

"(A) all costs related to services, facilities, and products which are developed, manufactured, or offered—

"(i) by such dominant carrier, or any affiliated organization (other than the costs of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization); or

"(ii) by such regulated carrier or any affiliated organization, to the extent such services, facilities, or products are subject to the regulatory authority of the Commission or to the regulatory authority of any State commission; and

"(B) all costs related to services, facilities, and products which are developed, manufactured, or offered—

"(i) by any fully separated subsidiary of a dominant carrier, or of any affiliated organization, or as the result of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization; or

"(ii) by any regulated carrier or any affiliated organization, to the extent such services, facilities, or products are not subject to any regulatory authority specified in subparagraph (A)(ii).

The Commission shall establish such system not later than 2 years after the date of the enactment of the Telecommunications Act of 1980. The Commission shall consult with State commissions in establishing that portion of such system which is required in paragraph (1).

"(b) The Commission shall have authority to waive any of the accounting requirements established by the Commission under subsection (a) with respect to any carrier (other than any dominant carrier).

"(c)(1) The Commission shall submit an interim report to each House of the Congress not later than 18 months after the date of the enactment of the Telecommunications Act of 1980. Such report shall include a summary of action taken by the Commission to establish the accounting system required in subsection (a), together with such other information as the Commission considers appropriate.

"(2) The Commission shall submit a final report to each House of the Congress as soon as practicable after the establishment by the Commission of the accounting system required in subsection (a). Such report shall include a detailed explanation of the manner in which the accounting methods, procedures, and techniques contained in such system are intended to operate, together with such other information as the Commission considers appropriate.

"NETWORK MANAGEMENT

"SEC. 255. (a) Subject to the provisions of subsection (b), any carrier may engage in any meeting with any other carrier for purposes of planning or agreeing to—

"(1) the design, plan (including the establishment of through routes), construction, operation, and maintenance of any network of telecommunications services or facilities;

"(2) the development of technical standards applicable to such services and facilities; and

"(3) any tariff for the provision of joint and through services, except that carriers shall not have any authority to meet under this section for purposes of planning or agreeing to any such tariff unless the provisions of such tariff are consistent with the requirements of section 211(c) and with the manner in which intraexchange access fees are established, and National Telecommunications Pool funds are distributed, under section 233.

"(b)(1) Except as provided in paragraph (3), any meeting specified in subsection (a) shall take place after reasonable notice is given by the carriers involved to the Commission, and a representative of the Commission shall be given an opportunity to attend, or otherwise monitor, any such meeting at the time it is conducted. The Commission shall make any such notice available at the offices of the Commission for public inspection immediately upon receipt of such notice by the Commission. The failure of the Commission to exercise such authority to attend or otherwise monitor a meeting shall not impair the authority of such carriers to conduct such meeting under this section.

"(2) Except as provided in paragraph (3), a transcript of each meeting shall be filed immediately with the Commission and shall be available at the offices of the Commission for public inspection not later than 30 days after the meeting involved is conducted, except that no transcript made available to the public may contain any material the disclosure of which, in the opinion of the Commission, could adversely affect the national defense and security or the emergency preparedness of the Nation.

"(3) The requirements applicable to carriers in paragraph (1) and paragraph (2) shall not apply in the case of any meeting for any purpose specified in subsection (a) which relates to any particular telecommunications service or facility if the carriers involved in such meeting are not in competition with each other with respect to the offering of such service or facility.

"(c) The Commission, upon its own initiative, upon the request of any interested carrier or other person, or upon the request of any Federal agency, shall have authority to require carriers to engage in meetings for the purpose of—

"(1) assuring the establishment and maintenance of appropriate networks of telecommunications services and facilities; and

"(2) maintaining the national defense and security and the emergency preparedness of the Nation.

"(d)(1) Nothing contained in this section shall be construed—

"(A) to authorize any meeting or other conduct among carriers the purpose of which is to engage in any activity which is prohibited by the Federal antitrust laws; or

"(B) to otherwise limit or affect the application of the Federal antitrust laws.

"(2) For purposes of this subsection, the term 'Federal antitrust laws' means—

"(A) the Sherman Act (15 U.S.C. 1 et seq.), section 73 through section 77 of the Wilson Tariff Act (15 U.S.C. 8-11), the Act entitled 'An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes"', approved February 12, 1913, the Clayton Act (15 U.S.C. 12 et seq.), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

"(B) any law enacted after the date of the enactment of the Telecommunications Act of 1980 by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any restraint upon, or monopolization of, interstate or foreign trade or commerce.".

MISCELLANEOUS PROVISIONS OF TITLE II OF COMMUNICATIONS ACT OF 1934

SEC. 5. (a) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 255, as added in section 4(d), the following heading:

"PART D—MISCELLANEOUS".

(b) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) by redesignating section 210 through section 212 as section 271 through section 273, and by transferring such sections to appear immediately after the heading for part D of title II of the Communications Act of 1934, as added in subsection (a);

(2) by redesignating section 216 as section 274, and by transferring such section to appear immediately after section 273, as so redesignated in paragraph (1);

(3) by redesignating section 219 as section 275, and by transferring such section to appear immediately after section 274, as so redesignated in paragraph (2); and

(4) by redesignating section 221 through section 224 as section 276 through section 279, respectively, and by transferring such sections to appear immediately after section 275, as so redesignated in paragraph (3).

(c) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 279, as so redesignated in subsection (b)(4), the following new sections:

"NATIONAL DEFENSE AND EMERGENCY PREPAREDNESS

"SEC. 280. (a) The President shall have authority to require any carrier subject to the provisions of this Act to furnish telecommunications services or facilities to any Federal agency if the President determines that—

"(1) the provision of such services or facilities is necessary or appropriate to promote the national defense and security or the emergency preparedness of the Nation;

"(2)(A) there is a threat of war with a foreign nation, the Nation is at war with a foreign nation, or there exists a state of public peril or disaster or other national emergency; or

"(B) in order to provide for the national defense and security or the emergency preparedness of the Nation, there is an immediate need for such services and facilities, and such need cannot be met through reliance upon any other source of supply; and

"(3) all other means of obtaining such services and facilities have been exhausted.

"(b) The provisions of section 606(e) shall apply in the case of any determination made by the President under this section.

"PUBLIC PARTICIPATION IN COMMISSION PROCEEDINGS AND TRANSITIONAL JOINT BOARD PROCEEDINGS

"SEC. 281. (a) The Commission is authorized to provide financial assistance for the direct costs of participation (including the costs of attorneys and expert witnesses) by any person in any proceeding of the Commission under this title in which there may be public participation pursuant to any Federal law, or pursuant to any rule or practice of the Commission. Financial assistance is authorized in any case in which—

"(1) the person applying for assistance represents an interest—

"(A) which would not otherwise be represented adequately in such proceeding; and

"(B) representation of which is necessary for a fair disposition of the proceeding; and

"(2) the person applying for such assistance does not have sufficient resources available to participate effectively in the proceeding in the absence of financial assistance.

"(b) Upon approving an application for financial assistance under this section, the Commission shall enter into a written agreement with the person who submitted the application. Such agreement shall—

"(1) specify the nature and extent of the representation to be provided by the person during the proceeding;

"(2) include procedures for examination and review by the Commission of the expenditures made by the person to provide such representation; and

"(3) specify the extent to which the financial assistance is to be provided in the form of advance payments.

"(c) The Commission shall not provide assistance under this section of more than $75,000 to any person for any fiscal year or for any proceeding.

"(d) Any person who receives financial assistance under this section shall be liable for repayment of all or part of such assistance whenever the Commission determines that—

"(1) such person has not provided the representation for which financial assistance was made available; or

"(2) such person acted in a manner demonstrating bad faith toward the Commission or another participant in the proceeding.

"(e) Not later than 90 days after the date of the enactment of the Telecommunications Act of 1980, the Commission shall propose and publish for comment rules to carry out the provisions of this section. The Commission shall adopt and put into effect such rules not later than 180 days after such date of enactment.

"(f) Any person seeking judicial review of any determination made by the Commission under this section regarding financial assistance may petition for such review after the Commission takes final action in the proceeding with respect to which such determination regarding financial assistance is made. No such petition may be brought before such final action is taken by the Commission.

"(g)(1) The aggregate amount of funds available for the payment of compensation to small business concerns in any one of the fiscal years for which funds are authorized to be appropriated under this section shall be equal to 25 percent of the aggregate amount of funds appropriated under this section for such fiscal year.

"(2) For purposes of this subsection, the term 'small business concern' means any private business, organization, or other enterprise which employs not more than 25 employees.

"(h) The provisions of this section shall apply to any proceeding conducted by the transitional joint board. The transitional joint board shall comply with the requirements of subsection (e).

"(i) There is authorized to be appropriated for the purpose of carrying out the provisions of this section with regard to proceedings before the Commission $750,000 for each of the fiscal years 1982, 1983, 1984, and 1985.

"(j) There is authorized to be appropriated for the purpose of carrying out the provisions of this section with regard to proceedings before the transitional joint board $500,000 for each of the fiscal years 1982, 1983, 1984, and 1985.".

RECIPROCITY

SEC. 6. Section 2 of the Communications Act of 1934 (47 U.S.C. 152) is amended by adding at the end thereof the following new subsection:

"(c)(1) The Commission shall have authority to conduct inquiries, and establish policies, rules, regulations, and requirements, applicable to permitting the entry of foreign telecommunications services and foreign telecommunications carriers into domestic United States telecommunications markets upon terms and conditions which are reciprocal with the terms and conditions under which United States telecommunications services and United States telecommunications carriers are permitted entry into—

"(A) the foreign nation in which the operations of such foreign telecommunications service or such foreign telecommunications carrier are based; or

"(B) the foreign nation under the laws of which such foreign telecommunications service or such foreign telecommunications carrier is established.

No other provision of this Act shall be construed to limit or otherwise restrict the authority of the Commission established in this paragraph.

"(2) In carrying out its authority under paragraph (1), the Commission shall have the authority to inquire into any charge, practice, classification, requirement, or provision of a service, facility, or product by any carrier in order to determine if such charge, practice, classification, requirement, or provision of a service, facility, or product is just and reasonable, promotes the public convenience and necessity, and ensures the equitable treatment and competitive position of United States enterprises in international markets.

"(3) The Commission shall adopt such rules, regulations, policies, requirements, and procedures, and may impose such restrictions upon a foreign telecommunications carrier or a foreign telecommunications service, as it determines to be necessary or appropriate to carry out the provisions of this subsection and to carry out its determinations under this subsection.

"(4)(A) In conducting any inquiry under paragraph (1), the Commission shall request and consider the views of the Secretary of State and the United States Trade Representative.

"(B) The President may, not later than 45 days after any final determination of the Commission regarding the imposition of reciprocal restrictions upon a foreign telecommunications carrier or a foreign telecommunications service, veto such final determination if the President determines that such final determination will injure the foreign policy interests of the United States.

"(C) If the President decides to take any action under this paragraph, he shall publish notice of his determination, including the reasons for the determination, in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

"(5) For purposes of this subsection:

"(A) The term 'foreign telecommunications carrier' means any common carrier which is—

"(i) an alien or the representative of an alien;

"(ii) a foreign government or representative of a foreign government;

"(iii) a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation; or

"(iv) a corporation more than 20 percent of the capital stock of which is owned of record or voted by or on behalf of, an alien or the representative of an alien, a foreign government or representative of a foreign government, or a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation.

"(B) The term 'foreign telecommunications service' means any telecommunications service or related service provided by or through the facilities of a carrier, more than 20 percent of the revenues or profit of which accrues (or would accrue if disbursements were made) to—

"(i) an alien or the representative of an alien;

"(ii) a foreign government or representative of a foreign government;

"(iii) a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation; or

"(iv) a corporation more than 20 percent of the capital stock of which is owned of record or voted by or on behalf of, an alien or the representative of an alien, a foreign government or representative of a foreign government, or a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation.".

UNAUTHORIZED INTERCEPTION AND USE OF SUBSCRIPTION TELECOMMUNICATIONS

SEC. 7. The Communications Act of 1934 (47 U.S.C. 15 et seq.) is amended by inserting after section 5 the following new section:

"UNAUTHORIZED INTERCEPTION AND USE OF SUBSCRIPTION TELECOMMUNICATIONS

"SEC. 6. (a)(1) Except as provided in paragraph (4), a person who—

"(A) knowingly carries out an unauthorized interception of a subscription telecommunication; or

"(B) knowingly attempts to carry out, or conspires to carry out, an unauthorized interception;

shall be liable for civil penalties under subsection (b) and shall be subject to criminal penalties under subsection (c)(1).

"(2) Except as provided in paragraph (4), a person who—

"(A) knowingly carries out an unauthorized interception of a subscription telecommunication; and

"(B) knowingly uses the subscription telecommunication for his own commercial advantage or financial gain, or for the commercial advantage or financial gain of any other person;

shall be liable for civil penalties under subsection (b) and shall be subject to criminal penalties under subsection (c)(2).

"(3) For purposes of this subsection, the interception of a subscription telecommunication by any person shall not be considered an unauthorized interception if—

"(A) such person is the originator of the subscription telecommunication, or his agent;

"(B) such person has agreed to pay a fee or charge to the person originating the subscription telecommunication, or his agent, for the use of the subscription telecommunication;

"(C) such person has entered into any other contractual arrangement or any other agreement under which such person is entitled to receive the subscription telecommunication from the person originating the subscription telecommunication, or his agent; or

"(D) such person has reasonable cause to believe that such person is entitled to receive the subscription telecommunication from the person originating the subscription telecommunication, or his agent.

"(4) The manufacture, shipment in commerce, distribution, sale, lease, or demonstration for sale of a satellite earth station shall not by itself constitute a violation of this section.

"(5) The provisions of paragraph (1) and paragraph (2) shall not apply to any interception which is authorized under chapter 119 of title 18, United States Code.

"(b)(1)(A) Except as provided in subparagraph (B), any person who is aggrieved by any violation of subsection (a) may commence a civil action for actual damages, for damages under paragraph (2), and for equitable relief against the person who is alleged to have committed the violation.

"(B) No civil action may be commenced under subparagraph (A) after the end of the 2-year period following the date of the discovery of the alleged violation, or the 7-year period following the date of the occurrence of the alleged violation, whichever occurs first.

"(2) Any person who violates subsection (a) shall be liable to any aggrieved person for damages in the amount of $100 per day for each day in which the violation occurs, except that any damages awarded under this paragraph shall not be more than $1,000.

"(3) In any civil action under this subsection in which the court determines that the plaintiff substantially has prevailed, the court may assess against the defendant reasonable attorney fees and other costs of litigation reasonably incurred.

"(4) Any civil action under this subsection may be commenced in any United States district court of competent jurisdiction, without regard to the amount in controversy, or in any other court of competent jurisdiction.

"(c)(1) Any person who violates subsection (a)(1) shall be fined not more than $25,000, or imprisoned for not more than 1 year, or both.

"(2) Any person (other than an individual) who violates subsection (a)(2) shall be fined not more than $1,000,000. Any individual who violates subsection (a)(2) shall be fined not more than $250,000, or imprisoned for not more than 18 months, or both. If the conviction is for a violation committed after the first conviction of the individual under this paragraph, the individual shall be fined not more than $250,000, or imprisoned for not more than 40 months, or both.

"(d) The penalties established in this section shall be in lieu of any penalties established in any other provision of this Act.

"(e) For purposes of this section:

"(1) The term 'basic telecommunications service' has the meaning given it in section 202(2).

"(2) The term 'decoding device' means any apparatus the sole design and function of which are to make intelligible subscription telecommunications which intentionally are modified, altered, or changed by the person originating such subscription telecommunications to make them unintelligible.

"(3) The term 'interception' means the receipt of any subscription telecommunication provided by or through the facilities of a carrier.

"(4) The term 'satellite earth station' means any apparatus (or any component part of an apparatus), except any decoding device, designed to receive telecommunications from a transmitter or transmitter relay located in planetary or solar orbit.

"(5) The term 'subscription telecommunication' means any telecommunication, other than basic telecommunications service, which is intended for receipt in intelligible form only by a person who has agreed to pay a fee or charge to the person originating the telecommunication, or his agent, or any other telecommunication incident to such telecommunication."

PENALTIES

SEC. 8. (a) Section 215(e) of the Communications Act of 1934, as so redesignated in section 2(b)(1) and in section 2(b)(2)(E), is amended by striking out "$100" and inserting in lieu thereof "an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $2,500,".

(b) Section 217(c) of the Communications Act of 1934, as so redesignated in section 2(d)(1), is amended by striking out "the sum of $500" and inserting in lieu thereof "an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $100,000,", and by striking out "$25" and inserting in lieu thereof "an amount assessed by the Commission in accordance with such procedure, which shall not exceed $5,000,".

(c) Section 232(e) of the Communications Act of 1934, as so redesignated in section 3(b)(1), is amended by striking out "the sum of $500" and inserting in lieu thereof "an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $100,000,", and by striking out "$25" and inserting in lieu thereof "an amount assessed by the Commission in accordance with such procedure, which shall not exceed $5,000,".

(d) Section 235(b) of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended by striking out "the sum of $1,000" and inserting in lieu thereof "an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $25,000,".

(e)(1) Section 252(d) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "the sum of $500" and inserting in lieu thereof "an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $100,000,".

(2) Section 252(e) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "$1,000" and inserting in lieu thereof "$10,000", and by striking out "$5,000" and inserting in lieu thereof "$100,000".

(f) Section 275(b) of the Communications Act of 1934, as so redesignated in section 5(b)(3), is amended by striking out "the sum of $100" and inserting in lieu thereof "an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $2,500,".

(g)(1) The first sentence of section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

(A) by inserting "$5,000 for each violation, in the case of a dominant carrier or other regulated carrier, or" after "exceed"; and

(B) by inserting ", in the case of any other person" before the period at the end thereof.

(2) Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

(A) by redesignating subparagraph (A) and subparagraph (B) as subparagraph (B) and subparagraph (C), respectively, and by inserting before subparagraph (B), as so redesignated, the following new subparagraph:

"(A) $500,000, if the violator is a dominant carrier or other regulated carrier;";

(B) in subparagraph (B) thereof, as so redesignated in subparagraph (A), by inserting "(other than a dominant carrier or other regulated carrier)" after "this Act"; and

(C) in subparagraph (C) thereof, as so redesignated in subparagraph (A), by inserting "or subparagraph (B)" before the period at the end thereof.

(h) Section 504 of the Communications Act of 1934 (47 U.S.C. 504) is amended by adding at the end thereof the following new subsection:

"(d) In any case in which a carrier is required to pay any forfeiture penalty under any provision of this Act, such forfeiture penalty shall not be allowed as an operating expense for ratemaking purposes.".

APPLICATION OF ANTITRUST LAWS

SEC. 9. (a) The amendments to the Communications Act of 1934 (47 U.S.C. 151 et seq.) made by this Act shall not be construed—

(1) to create any immunity to any civil or criminal action under any Federal antitrust law, or to alter or restrict in any manner the applicability of any Federal antitrust law;

(2) to express any intention of the Congress with respect to the issues of liability or appropriate relief, including structural relief, in any antitrust litigation which is pending on the date of the enactment of this Act, or which may be commenced after such date of enactment, and in which any person subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended by this Act, including any fully separated subsidiary of a dominant carrier, is a party;

(3) to limit or affect in any manner the ability of the courts of the United States to determine liability or to grant appropriate relief, including structural relief, in any antitrust litigation in which any person subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended by this Act, is a party; or

(4) to prohibit the treatment of a dominant carrier and any fully separated subsidiary of such dominant carrier as separate persons for purposes of the Federal antitrust laws.

(b) For purposes of this section, the term "Federal antitrust laws" means—

(1) the Sherman Act (15 U.S.C. 1 et seq.), section 73 through section 77 of the Wilson Tariff Act (15 U.S.C. 8-11), the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'", approved February 12, 1913, the Clayton Act (15 U.S.C. 12 et seq.), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

(2) any law enacted after the date of the enactment of this Act by the Congress which prohibits, or makes available to the United States or any person in any court of the United States any civil remedy with respect to, any restraint upon, or monopolization of, interstate or foreign trade or commerce.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 10. (a)(1) Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended—

(A) by striking out "communication by wire and radio" and inserting in lieu thereof "telecommunications, and regulating interexchange telecommunications service,";

(B) by striking out "wire and radio communication service" and inserting in lieu thereof "telecommunications service";

(C) by striking out "wire and radio communication" the second place it appears therein and inserting in lieu thereof "telecommunications service"; and

(D) by striking out "wire and radio communication" the last place it appears therein and inserting in lieu thereof "telecommunications service, and with respect to interexchange telecommunications service".

(2) Section 2(a) of the Communications Act of 1934 (47 U.S.C. 152(a)) is amended—

(A) by striking out "communication by wire or radio" and inserting in lieu thereof "telecommunications service, all interexchange telecommunications service";

(B) by striking out "such communication or" and inserting in lieu thereof "the provision of such telecommunications service or in"; and

(C) by striking out "wire or radio communication" each place it appears therein and inserting in lieu thereof "the provision of telecommunications service".

(3) Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended—

(A) by striking out "section 224" and inserting in lieu thereof "sections 201, 211(a)(2), 211(a)(3), 211(a)(4), 211(c), 211(d)(3), 211(d)(4), 211(e), 216, 217, 219, 232, 233, 234, 235, 255, and 279,";

(B) by striking out "intrastate communication service by wire or radio" and inserting in lieu thereof "intraexchange telecommunications service";

(C) by striking out "interstate or foreign communication" each place it appears therein and inserting in lieu thereof "interexchange telecommunications service or foreign communications";

(D) by striking out "201 through 205" and inserting in lieu thereof "216(f), 216(g), 217, 232, 233, 234, and 235"; and

(E) by striking out ", both inclusive,".

(4) Section 3(a) of the Communications Act of 1934 (47 U.S.C. 153(a)) is amended to read as follows:

"(a) 'Telecommunications' means any transmission, emission, or reception of signs, signals, writings, images, and sound or intelligence of any nature by wire, radio, optical, or other electromagnetic systems. Such term includes radio communication or communication by radio, as defined in paragraph (b).".

(5) Section 3(e) of the Communications Act of 1934 (47 U.S.C. 153(e)) is amended by striking out "section 223" and inserting in lieu thereof "section 278".

(6) Section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)) is amended to read as follows:

"(h) 'Common carrier' and 'carrier' mean any person who provides any interexchange telecommunications service, intraexchange telecommunications service, or foreign transmission for hire. Such term does not include the shared use of telecommunications services and facilities on a nonprofit basis. Any person engaged in the provision of television or radio broadcasting services, or the provision of cable service (as defined in section 218(e)(2)), shall not be considered to be a carrier for purposes of title II of this Act, to the extent such person is so engaged in the provision of any such service, except that nothing in this paragraph shall be construed to affect any authority of any State or local government, as such authority exists on the date of the enactment of the Telecommunications Act of 1980.".

(7) Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(A) by striking out paragraph (r) and paragraph (s), and by redesignating paragraph (t) through paragraph (ff) as paragraph (r) through paragraph (dd), respectively; and

(B) by adding at the end thereof the following new paragraph:

"(ee) 'Dominant carrier', 'interexchange telecommunications service', 'intraexchange telecommunications service', 'local exchange area', and 'regulated carrier' have the meanings given them in section 202.".

(8) Section 3(r) of the Communications Act of 1934, as so redesignated in paragraph (7), is amended by striking out "intrastate" and inserting in lieu thereof "intraexchange".

(9) Section 4(b) of the Communications Act of 1934 (47 U.S.C. 154(b)) is amended—

(A) by striking out "for wire or radio communication" and inserting in lieu thereof "for providing telecommunications service; in the manufacture or sale of terminal equipment or terminal devices";

(B) by striking out "communication by wire or radio or" each place it appears therein and inserting in lieu thereof "any business which provides telecommunications service,"; and

(C) by striking out "for communication by wire or radio" and inserting in lieu thereof "for providing telecommunications service, or to any company manufacturing or selling terminal equipment or terminal devices".

(10) Section 4(k)(1) of the Communications Act of 1934 (47 U.S.C. 154(k)(1)) is amended by striking out "interstate and foreign wire and radio communication" and inserting in lieu thereof "interexchange telecommunications service and foreign transmissions,".

(11) Section 4(o) of the Communications Act of 1934 (47 U.S.C. 154(o)) is amended by striking out "radio and wire communications" and inserting in lieu thereof "telecommunications".

(12) Section 216(f) of the Communications Act of 1934, as so redesignated in section 2(c)(2)(A), is amended—

(A) by striking out "interstate or foreign communication by wire or radio" and inserting in lieu thereof "foreign telecommunications"; and

(B) by striking out "communication" the last place it appears therein and inserting in lieu thereof "telecommunications".

(13) Section 216(g) of the Communications Act of 1934, as so redesignated in section 2(c)(2)(B), is amended—

(A) by striking out "such communication service" and inserting in lieu thereof "the provision of telecommunications service by dominant carriers and other regulated carriers";

(B) by striking out "communications by wire or radio" and inserting in lieu thereof "telecommunications service"; and

(C) by striking out "common carrier" the first, third, and last places it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(14) Section 217(a) of the Communications Act of 1934, as so redesignated in section 2(d)(1), is amended by striking out "common carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier", and by striking out "communication" and inserting in lieu thereof "telecommunications".

(15) Section 217(b) of the Communications Act of 1934, as so redesignated in section 2(d)(1), is amended by striking out "common carrier lines of communication" and inserting in lieu thereof "facilities of a dominant carrier or other regulated carrier".

(16) Section 217(c) of the Communications Act of 1934, as so redesignated in section 2(d)(1), is amended by striking out "carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(17) Section 232(a) of the Communications Act of 1934, as so redesignated in section 3(b)(1), is amended by striking out "interstate and foreign wire or radio communication" and inserting in lieu thereof "interexchange telecommunications service, and foreign transmissions,".

(18) Section 232(b)(1) of the Communications Act of 1934, as so redesignated in section 3(b)(1), is amended—

(A) by inserting "by a dominant carrier or other regulated carrier" after "published" the first place it appears therein; and

(B) by adding at the end thereof the following new sentence: "In the case of any other carriers, such notice shall be made at any time before any such change is made.".

(19) Section 232(c) of the Communications Act of 1934, as so redesignated in section 3(b)(1), is amended—

(A) by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier";

(B) by striking out "engage or participate in such communication" and inserting in lieu thereof "provide interexchange telecommunications service or foreign transmissions"; and

(C) by striking out "such communication" each place it appears therein and inserting in lieu thereof "the provision of such service or transmissions".

(20) Section 234(a) of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended—

(A) by striking out "carrier or carriers" the first place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier";

(B) by striking out "interested carrier or carriers" the first place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier imposing such charge";

(C) by striking out "interested carrier or carriers" the last place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier"; and

(D) in the last sentence, by striking out "carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(21) Section 234(b) of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended by striking out "carrier or carriers affected" and inserting in lieu thereof "dominant carrier or other regulated carrier involved".

(22) Section 235(a) of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended by striking out "carrier or carriers" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(23) Section 235(b) of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(24) The heading for section 236 of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended by striking out "CARRIERS" and inserting in lieu thereof "DOMINANT CARRIERS AND OTHER REGULATED CARRIERS".

(25) Section 236 of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended by striking out "common carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(26) Section 237 of the Communications Act of 1934, as so redesignated in section 3(b)(2), is amended—

(A) by striking out "common carrier subject to the provisions of this Act" and inserting in lieu thereof "dominant carrier or other regulated carrier"; and

(B) by striking out "common carrier" the last place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(27) Section 239 of the Communications Act of 1934, as so redesignated in section 3(b)(4), is amended—

(A) by striking out "common carrier subject to this Act" and inserting in lieu thereof "dominant carrier or other regulated carrier";

(B) by striking out "common carrier" the second, third, and last places it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier"; and

(C) by striking out "carrier or carriers" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(28) Section 240 of the Communications Act of 1934, as so redesignated in section 3(b)(4), is amended by striking out "carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier involved".

(29) The heading for section 251 of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended to read as follows:

"VALUATION OF PROPERTY OF DOMINANT CARRIERS AND OTHER REGULATED CARRIERS".

(30) Section 251(a) of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended—

(A) by striking out "The" and inserting in lieu thereof "Subject to section 252(b), the"; and

(B) by striking out "carrier subject to this Act" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(31) Section 251(b) of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(32) Section 251(c) of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(33) Section 251(d) of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(34) Section 251(e) of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended by striking out "common carriers" and inserting in lieu thereof "any dominant carrier or other regulated carrier", and by striking out "carrier" and inserting in lieu thereof "dominant carrier properties or other regulated carrier".

(35) Section 251(f) of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended—

(A) by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier"; and

(B) in the last sentence, by inserting "and consistent with the provisions of section 252(b)" before the period at the end thereof.

(36) Section 251 of the Communications Act of 1934, as so redesignated in section 4(b)(1), is amended by striking out subsection (g) thereof and by redesignating subsection (h) thereof as subsection (g).

(37) Section 252(a) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "carriers subject to this Act" and inserting in lieu thereof "any dominant carrier or other regulated carrier".

(38) Section 252(c) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "carriers" and inserting in lieu thereof "dominant carriers or other regulated carriers".

(39) Section 252(d) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(40) Section 252(e) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(41) Section 252(h) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "classify carriers subject to this Act and".

(42) Section 252(i) of the Communications Act of 1934, as so redesignated in section 4(b)(2), is amended by striking out "any carrier" and inserting in lieu thereof "the dominant carrier or other regulated carrier".

(43) Section 253(a) of the Communications Act of 1934, as so redesignated in section 4(b)(3), is amended—

(A) by striking out "common carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier";

(B) by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier";

(C) by inserting "telecommunications" before "services" the second place it appears therein;

(D) by striking out ", in wire or radio communications subject to this Act,"; and

(E) by inserting "telecommunications" before "service" the first place it appears therein.

(44) Section 253(c) of the Communications Act of 1934, as so redesignated in section 4(b)(3), is amended—

(A) by striking out "common carriers subject to this Act" and inserting in lieu thereof "dominant carriers or other regulated carriers"; and

(B) by striking out "another common carrier subject to this Act" and inserting in lieu thereof "any other such carrier".

(45) Section 271(a) of the Communications Act of 1934, as so redesignated in section 5(b)(1), is amended by striking out "common carriers" the first place it appears

therein and inserting in lieu thereof "dominant carriers or other regulated carriers", and by striking out "other" the last place it appears therein.

(46) Section 271(b) of the Communications Act of 1934, as so redesignated in section 5(b)(1), is amended by striking out "common carriers" and inserting in lieu thereof "dominant carriers or other regulated carriers".

(47) Section 272(a) of the Communications Act of 1934, as so redesignated in section 5(b)(1), is amended by striking out "carrier subject to this Act" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(48) Section 272(b) of the Communications Act of 1934, as so redesignated in section 5(b)(1), is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(49) Section 273 of the Communications Act of 1934, as so redesignated in section 5(b)(1), is amended—

(A) by striking out "After sixty days from the enactment of this Act" and inserting in lieu thereof "Except as provided in section 214(c)(1)(B),";

(B) by striking out "carrier subject to this Act" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier";

(C) by striking out "carrier" the second place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier"; and

(D) by striking out "carriers" each place it appears therein and inserting in lieu thereof "dominant carriers or other regulated carriers".

(50) Section 276(b) of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended by striking out "interstate" and inserting in lieu thereof "interexchange telecommunications service".

(51) Section 276(c) of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended—

(A) by striking out "interstate" and inserting in lieu thereof "interexchange telecommunications service"; and

(B) by adding at the end thereof the following new sentence: "The Commission shall not have any authority to carry out any functions or activities under this subsection during the period beginning on the date of the establishment of the transitional joint board and ending at the end of the period specified in section 231(i).".

(52) Section 276(d) of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended by striking out "interstate" and inserting in lieu thereof "interexchange telecommunications service".

(53) Section 277(a)(10) of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended by striking out ", except Hawaii".

(54) Section 277 of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended by adding at the end thereof the following new subsection:

"(g)(1) The authority of any carrier to provide any service or operate any facilities which it is authorized to provide or operate on the date of the enactment of the Telecommunications Act of 1980 shall not be altered or otherwise affected by the inclusion of the State of Hawaii in the definition of 'continental United States'. Such inclusion shall not restrict or impair the eligibility of any carrier, after such date of enactment, for new or additional authority.

"(2) Whenever, upon complaint or upon its own initiative, and after opportunity for a hearing, the Commission finds that any charge, classification, regulation, or practice relating to intercarrier arrangements of any carrier serving the State of Hawaii is or will be unjust, unreasonable, discriminatory, or not in the public interest, the Commission shall determine and prescribe a charge, classification, regulation, practice, or other remedy which is or will be just, reasonable, nondiscriminatory, and in the public interest, and which shall be followed after the date of such action by the Commission.".

(55) Section 278 of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended by inserting the following new heading at the beginning thereof:

"PROHIBITION OF CERTAIN TELEPHONE CALLS".

(56) Section 278(1) of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended by striking out "in the District" and all that follows through "by means of telephone" and inserting in lieu thereof "by means of telephone in the District of Columbia, between local exchange areas, or between a local exchange area and a point in a foreign nation".

(57) Section 279(a)(1) of the Communications Act of 1934, as so redesignated in section 5(b)(4), is amended by striking out "wire communication" and inserting in lieu thereof "the provision of telecommunications service".

(58) Section 303(r) of the Communications Act of 1934 (47 U.S.C. 303(r)) is amended by striking out "radio or wire communications" and inserting in lieu thereof "telecommunications".

(59) Section 406 of the Communications Act of 1934 (47 U.S.C. 406) is amended—

(A) by striking out "carrier subject to this Act" and inserting in lieu thereof "dominant carrier or other regulated carrier";

(B) by striking out "service in interstate or foreign communication by wire or radio" and inserting in lieu thereof "any interexchange telecommunications service or any foreign transmission";

(C) by inserting "any service" before "in interstate" the last place it appears therein; and

(D) by striking out "communication" the second and last places it appears therein and inserting in lieu thereof "telecommunications".

(60) Section 407 of the Communications Act of 1934 (47 U.S.C. 407) is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(61) Section 410(a) of the Communications Act of 1934 (47 U.S.C. 410(a)) is amended by striking out "wire or radio communication" and inserting in lieu thereof "provision of telecommunications service".

(62) The first sentence of section 410(c) of the Communications Act of 1934 (47 U.S.C. 410(c)) is amended—

(A) by striking out "The" and inserting in lieu thereof "After the termination of the transitional joint board under section 231(i), the"; and

(B) by striking out "interstate and intrastate operations" and inserting in lieu thereof "interexchange telecommunications service and intraexchange telecommunications service".

(63) Section 412 of the Communications Act of 1934 (47 U.S.C. 412) is amended—

(A) by striking out "common carriers" and inserting in lieu thereof "dominant carriers and other regulated carriers";

(B) by striking out "carriers" the last place it appears therein and inserting in lieu thereof "dominant carriers, other regulated carriers,"; and

(C) by striking out "foreign wire or radio communication" and inserting in lieu thereof "foreign transmissions".

(64) Section 413 of the Communications Act of 1934 (47 U.S.C. 413) is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier", and by striking out "subject to this Act".

(65) Section 415(a) of the Communications Act of 1934 (47 U.S.C. 415(a)) is amended by striking out "carriers" and inserting in lieu thereof "dominant carriers or other regulated carriers".

(66) Section 415(b) of the Communications Act of 1934 (47 U.S.C. 415(b)) is amended by striking out "carriers" and inserting in lieu thereof "dominant carriers or other regulated carriers".

(67) Section 415(c) of the Communications Act of 1934 (47 U.S.C. 415(c)) is amended—

(A) by striking out "carriers" and inserting in lieu thereof "dominant carriers or other regulated carriers"; and

(B) by striking out "carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(68) Section 415(d) of the Communications Act of 1934 (47 U.S.C. 415(d)) is amended by striking out "carrier" each place it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier".

(69) Section 415(e) of the Communications Act of 1934 (47 U.S.C. 415(e)) is amended by striking out "carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(70) Section 416(a) of the Communications Act of 1934 (47 U.S.C. 416(a)) is amended by striking out "carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier involved".

(71) Section 502 of the Communications Act of 1934 (47 U.S.C. 502) is amended by striking out "radio or wire communications" and inserting in lieu thereof "telecommunications".

(72) Section 503(a) of the Communications Act of 1934 (47 U.S.C. 503(a)) is amended—

(A) by striking out "interstate or" the first place it appears therein and inserting in lieu thereof "transmission between local exchange areas or for";

(B) by striking out "carrier" the first and second places it appears therein and inserting in lieu thereof "dominant carrier or other regulated carrier";

(C) by striking out "interstate or foreign wire or radio" and inserting in lieu thereof "interexchange telecommunications or foreign"; and

(D) by striking out "common carrier" and inserting in lieu thereof "dominant carrier or other regulated carrier".

(73) Section 605 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(A) by striking out "interstate or foreign communication by wire or radio" and inserting in lieu thereof "telecommunications between local exchange areas, or between a local exchange area and any point in a foreign nation,"; and

(B) by striking out "communication" the second and third places it appears therein and inserting in lieu thereof "telecommunication".

(74) Section 606(b) of the Communications Act of 1934 (47 U.S.C. 606(b)) is amended—

(A) by striking out "interstate or foreign communication by radio or wire" and inserting in lieu thereof "telecommunications between local exchange areas, or between a local exchange area and any point in a foreign nation"; and

(B) by striking out "communication" the last place it appears therein and inserting in lieu thereof "telecommunications".

(75) Section 606(d)(2) of the Communications Act of 1934 (47 U.S.C. 606(d)(2)) is amended by inserting "telecommunications" before "facility", and by striking out "for wire communication".

(b)(1) Clause (iii) of section 46(c)(3)(B) of the Internal Revenue Code of 1954 (relating to public utility property) is amended by striking out "section 222(a)(5)" and inserting in lieu thereof "section 277(a)(5)", and by striking out "; 47 U.S.C. 222(a)(5)".

(2) Section 201(c)(3) of the Communications Satellite Act of 1962 (47 U.S.C. 721(c)(3)) is amended by striking out "section 214(d)" and inserting in lieu thereof "section 215(e)".

(3) Section 201(c)(10) of the Communications Satellite Act of 1962 (47 U.S.C. 721(c)(10)) is amended by striking out "section 214" and inserting in lieu thereof "section 215".

EFFECTIVE DATES; TRANSITIONAL PROVISIONS

SEC. 11. (a) Except as provided in subsection (b) and subsection (c), the foregoing provisions of this Act, and the amendments made by this Act, shall take effect—

(1) on the date the transitional joint board is established under section 231(a) of the Communications Act of 1934, as added by section 3(a); or

(2) 90 days after the date of the enactment of this Act;

whichever occurs first.

(b) Section 212(a)(5), section 216(b)(2)(B), section 216(c)(3)(B), section 231(a), section 231(c), section 233(b)(4), section 254, and section 281(e) of the Communications Act of 1934, as added by the foregoing provisions of this Act, shall take effect on the date of the enactment of this Act.

(c)(1) With respect to terminal equipment and terminal devices furnished by a dominant carrier and of a type in use on the date of the enactment of this Act, the last sentence of section 202(17), section 211(a)(6), and section 211(d)(1)(A) of the Communications Act of 1934, as added by the foregoing provisions of this Act, shall take effect in accordance with subsection (a).

(2) With respect to terminal equipment and terminal devices furnished by any carrier other than a dominant carrier and in use on the date of the enactment of this Act, the provisions specified in paragraph (1) shall take effect—

(A) on the effective date of regulations prescribed by the transitional joint board for the purpose of carrying out section 231(a)(3) of the Communications Act of 1934, as added by section 3(a); or

(B) 1 year after the date of the enactment of this Act;

whichever occurs first.

(3) With respect to terminal equipment and terminal devices offered for sale after the date of the enactment of this Act, the provisions specified in paragraph (1) (other than section 231(a)(3) of the Communications Act of 1934) shall take effect in accordance with subsection (a).

BACKGROUND AND NEED

Introduction

During the last decade, a series of regulatory and judicial decisions have caused the Congress to focus attention on Federal policies governing the telecommunications industry. Both the Federal Communications Commission's decisions allowing customers to provide their own telephones, switchboards and other kinds of terminal equipment, as well as a series of commission and court decisions permitting competitive intercity telephone service have challenged the Congress to conform the 1934 Communications Act to this new age.

Developments in telecommunications technology over the past 10 years have coincided with and complemented these policy changes, creating opportunities for competition where none existed before. Consumers already are reaping the benefits, receiving an expanded range of products at lower prices. Data transmission and low-cost long-distance telephone services that once were available only to large volume business users now are marketed to residential customers.

The steady trend toward more competition in the telecommunications industry demands a corresponding adjustment in federal law. Competition must be affirmed and fostered. In a competitive environment, an out-of-date regulatory process can be misused to create artificial barriers to entry and to divide markets. Without legislative reform, competition could founder, research and product innovation could be discouraged. Just as important, the maintenance of universal telephone service at affordable rates must be preserved.

H.R. 6121 represents the culmination of five years of study and debate by the Congress, and particularly our Subcommittee on Communications. The legislation embraces competition and solutions to the issues raised by its growth in the telecommunications industry.

Structure of the domestic telecommunications industry

Traditional Telephone Companies.—Local telephone service in the United States is provided today by 23 Bell operating companies and approximately 1,500 independent telephone companies, some of which are nonprofit, municipal or cooperative systems. General Telephone and United Telecommunications are the two largest independent holding companies. The following table presents selected data on telephone service.

SUMMARY STATISTICS ON TELEPHONE SERVICE (1979)[1]

	Telephones served		Operating revenues	
	Number (thousands)	Percent of total	Amount (thousands)	Percent of total
Bell	141,936	81.0	$46,430,667	83.6
General	15,139	8.6	4,380,965	7.9
United	4,502	2.6	1,281,627	2.3
Other independents	13,585	7.7	3,434,408	6.2
Total	175,162		55,527,667	

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[1] From: "Independent Phone Facts '80," United States Independent Telephone Association.

Traditionally, telephone companies have provided end-to-end telephone service; that is, the telephone instrument and other terminal equipment, the subscriber loop (the wire leading into the home), and the central office, which contains switching equipment to access the long distance or toll network.

The dominant long distance telephone network is composed of transmission lines and, increasingly, terrestrial and satellite microwave relays, as well as a hierarchy of switching equipment through which calls are routed across the country. The Long Lines Department of AT&T manages and operates the dominant long distance network.

This integrated national telephone network is composed of AT&T Long Lines, the Bell operating companies and the independent telephone companies. It provides five general categories of service:

1. Local switched telephone service—local service usually offered on a flat rate basis, although some companies are now experimenting with usage-sensitive pricing;
2. Interstate toll—long distance service within a state which is usually priced on a per call basis;
3. Other intrastate service—private lines, Wide Area Telephone Service (WATS), directory assistance, etc.;
4. Interstate toll—long-distance calling between states which is usually priced on a per call basis;
5. Other interstate services—interstate private lines, WATS, directory assistance, etc.

Under the 1934 Communications Act, the FCC regulates the rates for the fourth and fifth categories only; the three other types of service are regulated by state commissions.

In the last 25 years the traditional telephone companies have been joined by a variety of other providers of telecommunications facilities and services. These new participants may be divided into two broad categories: suppliers of terminal equipment, i.e., the "interconnect" industry, and operators of competitive intercity service.

The landmark *Hush-a-Phone* (1956) and *Carterfone* (1968) decisions opened the door to customer-provided terminal equipment, thereby leading to the development of the interconnect industry. Much of the competitively supplied equipment is designed for data communications—keyboards, displays, printers, etc. More recently, point of sale terminals and electronic bank "tellers" have been added to the market, often by companies who also manufacture and supply computer equipment, cash registers and other related products.

Competitors also supply a wide range of equipment for voice communications including basic telephones, business telephone systems and ancillary devices such as automatic dialers and answering equipment. Electronic alarm systems and facsimile machines are just two examples of innovative terminal equipment that is now available to customers.

The competitive intercity market also is expanding. Traditional telephone companies now compete with specialized microwave carriers, domestic satellite systems and a number of "value-added" carriers—that is, companies which lease transmission lines from other carriers and add equipment of their own to offer specialized communications services. The Federal Communications Commission has acted recently to deregulate most of the smaller carriers in interexchange markets.

Western Union Co.—W.U. has had a monopoly on domestic telegraph service (i.e., record or non-voice service) for years, but this business has been declining in recent years as costs of voice communications (i.e., telephone) decrease and other forms of electronic communications are developed. In 1979, the Commission opened the domestic record market to competition. W.U. also provides data services, teleprinter services, private line voice service, and is in the domestic satellite business. It leases some of AT&T's interstate network for some of its services.

International Record Carriers (IRC's).—ITT Worldcom, RCA Globcom, Western Union International (WUI is not affiliated with Western Union), TRT (owned by United Brands), Graphnet, Tele-et, and FTC (French Telephone) provide international non-voice (i.e., record) service and international private line service. They are dependent upon Western Union's domestic service for the distribution and pick-up of much of their business.

Radio Common Carriers.—These companies, which are independent, non-telephone companies, provide car-telephone service, beeper (i.e., paging) service, and air-to-ground service. These companies are dependent upon the telephone companies for interconnection in order to make their services work. Local telephone companies also provide these services and AT&T is the largest single company in this business.

Maritime Radio Common Carriers.—These companies provide both voice and non-voice services for the recreational and commercial maritime community.

While AT&T is the dominant company in the maritime voice service, some independent non-telephone companies are also involved. ITT, RCA, and some independent non-telephone companies provide the maritime users with non-voice services. These companies are dependent upon Western Union and AT&T for interconnections in order to connect their maritime users with homes and businesses throughout the U.S.

Specialized Common Carriers.—These companies compete with AT&T and Western Union for the provision of data, private line voice services, and now, MTS equivalent services. Some of these carriers build their own transmission system, while others either lease capacity from other carriers or use a combination of leased capacity and owned and operated capacity.

MCI, Southern Pacific Communications Company (part of the SP Railroad family), USTS (ITT), Tymshare, Telenet (GTE), Graphnet, and SBS (IBM, Comsat, Aetna) are some of these companies. (SBS expects to commence operations shortly.)

Miscellaneous Common Carriers.—These companies primarily provide microwave transmission networks for the distribution of audio and video signals to local broadcast stations and cable television systems. While AT&T provides most of these services in the eastern U.S., non-telephone owned companies provide most of these services in the mid- and far-West. Some of their services are connected with those of AT&T.

MDS (Multiple Distribution Service) carriers provide local omnidirectional microwave services which are used primarily to distribute video programming to apartments, hotels, and some private residences.

Domestic Satellite Carriers.—These companies provide services directly to customers or are interconnected at their earth stations with other common carriers for distribution of signals to and from customers. They provide video and audio transmission services for both broadcasting and cable television companies. They also provide private line services.

Some of these companies are RCA Americom, Western Union, American Satellite Corp. (which leases capacity from Western Union's satellites), Comstar (leased by AT&T and GTE from Comsat), and SBS (IBM-Comsat-Aetna).

Comsat.—Comsat was created by an act of Congress in 1962 to provide international communications services by satellite. As the sole U.S. representative to INTELSAT and INMARSAT, Comsat provides international satellite service to U.S. common carriers and users.

Comsat also provides domestic satellite service, through its Comstar satellite system, to AT&T and GT&E.

Regulatory history

A variety of state and federal agencies have regulated communications common carriers throughout this century. Government oversight of the industry began within a decade of the invention of the telephone, with the adoption of two state statutes. Faced with growing demand for telephone service, other states soon enacted similar laws.

Early state and subsequent federal laws all were based upon the assumption that competition and marketplace forces alone could not ensure universal telephone service at reasonable prices. The provision of telephone service was regarded instead as a "public utility" obligating the supplier to provide high quality service at reasonable rates. The early state statutes codified these principles, establishing regulatory controls and agencies to enforce them.

By the 1900's, the telephone industry had developed to the point where it attracted the attention of the federal government. In seeking a legislative framework, Congress turned to the Interstate Commerce Act of 1887, a statute regulating the railroad industry. Adopted as an amendment to this law, the Mann-Elkins Act of 1910 authorized the Interstate Commerce Commission (ICC) to regulate interstate telephone service. The ICC's regulatory authority was strengthened significantly 10 years later with enactment of the Transportation Act, which contained important provisions pertaining to telecommunications. Thus, the framework for telecommunications regulation at the federal level was an outgrowth of 19th century transportation policy.

In 1932, the Congress launched a major study to determine, first, whether the telephone industry's structure served the public interest and, second, whether existing regulation was adequate. That study led to the Communications Act of 1934 and the creation of a new agency—the Federal Communications Commission (FCC)—to administer telecommunications regulation.

Like its predecessors on the state level, the Communications Act clearly favored government regulation over free market competition. The FCC was granted authority to adopt regulations designed to achieve the traditional objectives of a competitive market:*

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*The following discussion is adopted from "Agenda for Oversight," Communications Subcommittee Print, 4/26/76.

1. ***Prohibit monopoly prices yielding excessive profits.***—The 1934 Act directs the FCC to ensure that common carrier tariffs are "just and reasonable." Generally, "reasonable" prices are those which allow the carrier to recover its costs, including a "fair" return on capital. The Commission also is authorized to prohibit discriminatory and predatory pricing.

2. *Require efficient operation.*—Because rate of return regulation eliminates the incentive for efficient operation that characterizes competitive industries, the FCC is authorized to disallow any investment made by a carrier which would lead to inefficient operation.

3. *Control of entry.*—The FCC is authorized to control entry into various aspects fo the common carrier industry and activities of regulated companies in related industries.

The Communications Act of 1934 and the Commission's interpretation of it, in short, establish complete regulation over the traditional telephone industry. Telephone companies remained the exclusive providers of telephone service and equipment through the 1950's.

Since 1956, however, a series of technological advances, regulatory decisions and court rulings have eroded the monopoly of the traditional telephone industry. The following list summarizes the key regulatory and judicial decisions that opened the door to competition.

Regulatory and judicial decisions

1956 Hush-a-Phone ruling.—Reversing an FCC decision, the U.S. Court of Appeals (D.C. Cir.) rules that telephone subscribers have the right to use their telephones in ways "which are privately beneficial without being publicly detrimental." Specifically, the court permitted the sale of Hush-a-Phones, independently manufactured telephone attachments for screening out background noise during conversations.

1956 AT&T Consent Decree.—The decree, which terminated the government's 1949 antitrust suit against AT&T, enjoins AT&T from engaging in any business other than common carrier services, i.e., regulated services. AT&T may, however, provide services which are incidental common carrier communication services.

1959 Above 890 decision.—The FCC adopted a general policy allowing customers to construct and operate their own facilities for private, point-to-point telecommunications, bypassing the telephone company network altogether. The decision benefited heavy volume business customers who, for the first time, could build their own microwave towers for telephone service between different offices of a single company.

1968 Carterfone decision.—The FCC ruled that the telephone company did not have an exclusive monopoly on the manufacture, sale or lease of telephone receivers, switches (PBX's) and other terminal equipment. As a result, consumers today can buy or lease equipment from the telephone company or purchase it from independent manufacturers, e.g., the GTE Flip Phone.

1969 Microwave Communications, Inc. (MCI decision.)—The FCC permitted MCI to sell private line service in direct competition with the telephone company. Private line usually is used by high volume business customers who pay a flat monthly rate for transmission facilities dedicated to their use, e.g., for calls between GM headquarters and GM plants.

1970 Specialized Common Carrier decision.—After a two-year study, the FCC concluded that competition in the private line market had no adverse technical or economic effects on the telephone network. The FCC also found that since private line service as offered by the traditional industry made no contribution toward maintaining low residential rates, competition in this area would only benefit consumers.

1977 Execunet ruling.—Reversing an FCC decision, the U.S. Court of Appeals (D.C. Cir.) ruled that MCI could offer "Execunet" service flat-rate private-line service, Execunet bills subscribers on a per call in competition with AT&T's conventional long distance service. Unlike basis, with minutes of use and distance called determining the charge. Customers can also reach any city served by MCI, e.g., points outside the customer's own company. The service is especially attractive to small businesses and residential customers who do not place enough calls to justify full private line service.

Full competition

Despite the regulatory and judicial decisions which permit some degree of competition, the 1934 Communications Act does not give clear direction to the Commission to foster competition and to deregulate wherever appropriate. The Commission has generally interpreted the broad standards of the existing law to require telecommunications carriers to obtain FCC approval to start, extend, cut back or withdraw service. Tariff filings, which state the rates, terms and conditions of service, also have been mandatory.

Until recently, the FCC has applied these requirements not only to traditional common carriers, but also to new telecommunications competitors, such as MCI, Southern Pacific Communications and American Satellite, which offer low-cost, long-distance telephone calls, high-speed data transmission, and other specialized services. As a result, companies without significant market power such as MCI have been required to secure FCC approval before entering the market, and to file tariffs for all of its services. In some instances, protracted and costly regulatory and judicial proceedings have been used by established carriers to discourage or delay companies from offering new, competitive telecommunications services and products.

In May, 1980, the FCC voted to eliminate some of its regulations for telecommunications carriers. The result of two public inquiries and more than twelve years of study, the FCC's Computer Inquiry II decision closely parallels the provisions of H.R. 6121 in many respects. The FCC decision deregulates "enhanced services" (data communications and data processing), and permits traditional telephone companies to offer enhanced services, which are subject to competition, on an unregulated basis. AT&T and GTE, the two largest carriers, are afforded the same opportunity, provided they establish separate subsidiaries for their new competitive offerings.

The FCC Computer Inquiry II decision could well be the subject of protracted litigation and possible reversal by the courts. To date, 33 petitions to intervene have been filed at the U.S. Court of Appeals (D.C. Cir.) by parties claiming that: (1) the FCC does not have the authority to deregulate under the existing statute; (2) the FCC misinterpreted the 1956 Consent Decree which restricts AT&T to offering only regulated services; and/or (3) the FCC exceeded its authority by reserving the right to regulate data processing and data communications, if necessary.

In a subsequent decision, the Commission moved to deregulate some of the competitive intercity carriers—an action that was also consistent with the philosophy of this legislation. However, that decision, too, will be the subject of lengthy appeals.

H.R. 6121 eliminates this regulatory and legal uncertainty by removing unnecessary barriers to market entry and deregulating carriers without significant market power. The legislation also imposes far more stringent requirements regarding separation between AT&T's regulated and unregulated activities than those promulgated by the FCC. It also prohibits the Commission from asserting jurisdiction over the heretofore unregulated data processing industry.

To preserve universal service at affordable rates, the bill requires telephone companies to continue offering basic local and long-distance service on a fully regulated basis.

TREATMENT OF THE DOMINANT CARRIER

General approach

This legislation's treatment of the dominant carrier is primarily found in six sections: Section 202, which defines the important terms "dominant carrier," "affiliated organization," and "fully separated subsidiary"; Section 213, which requires the Commission to classify certain interexchange carriers as dominant; Section 214, which contains the requirements for full separation and which mandates that interexchange carriers classified as dominant offer unregulated services, products and facilities through such a subsidiary; Section 218, which deals with the January 24, 1956, Consent Decree between the American Telephone and Telegraph Company, the Bell Operating Companies and Western Electric, and the United States of America; Section 219, which governs the transaction between a dominant carrier and its fully separated subsidiary or subsidiaries; and Section 254, which establishes requirements for accounts and records.

The provisions of the sections cited above contain requirements which are unique to dominant carriers. It is the Committee's intention that at present only AT&T will be considered as dominant.

A. SECTION 202—DEFINITIONS

(1) *Affiliated Organization* (*Section 202(1)*).—This definition, when used with reference to a dominant carrier, means any company, business organization, subsidiary or other entity of such, except for any fully separated subsidiary or any subsidiary or other entity which provides intraexchange or interexchange telecommunications service.

When applied to AT&T, the term "affiliated organization" would encompass the Western Electric Company, the Bell Telephone Laboratories, and other support organizations. The term would not include AT&T, the parent company, AT&T LongLines (a division of the parent), any fully separated subsidiary nor any of the AT&T operating telephone companies (e.g., Southern Bell Telephone and Telegraph Company).

(2) *Dominant Carrier (Section 202(3))*.—This term refers to any interexchange carrier classified by the Commission as dominant pursuant to Section 213(a). With respect to AT&T, it includes AT&T (the parent company) AT&T LongLines (a division of the parent), and the AT&T operating telephone companies (e.g., Southwestern Bell Telephone and Telegraph Company). The term does not include any fully separated subsidiary, the Western Electric Company, Bell Telephone Laboratories, nor any other non-carrier support organization.

(3) *Fully Separated Subsidiary (Section 202(4))*.—This refers to the subsidiary required by the provisions of Section 214 or Section 218.

B. SECTION 213—CLASSIFICATION OF CARRIERS

This Section requires the Commission to classify certain interexchange carriers as dominant. It is the Committee's intent that presently only AT&T will be considered as dominant and specifically does not intend this classification presently to include any other carrier.

In determining whether an interexchange carrier is to be classified as dominant, or will continue to be so classified, the Commission shall take into account not only the intra and interexchange activities of the interexchange carrier itself, but also the activities of any fully separated subsidiary and any affiliated organizations.

Section 213 further provides that any person, including any Federal agency, may request the Commission to classify other interexchange carriers as dominant. Such persons may also petition the Commission to eliminate any dominant carrier classification.

C. SECTION 214

This Section contains five important elements: (1) the requirement that dominant carriers offer certain services, products and facilities only through a fully separated subsidiary; (2) the Commission's ability to assert regulatory authority; (3) requirements of the fully separated subsidiary; (4) sanctions and other Commission authority to deal with violations of the fully separate subsidiary requirements; and (4) employee protection provisions.

(1) *Unregulated Service, Facility and Product Offering Only Through a Fully Separated Subsidiary*.—A dominant carrier is not permitted to offer on an unregulated basis any telecommunication service, product or facility or service, product or facility incidental to telecommunications except through a fully separated subsidiary. The latter may only be offered through a fully separated subsidiary. Under this legislation, basic telecommunications service must continue to be offered subject to regulation. There are no provisions for the deregulation of these services.

Interexchange services and facilities, which are the same or essentially similar to those being offered on the date of enactment of this legislation, must remain under regulation until they are deregulated by the Commission under the effective competition or public convenience and necessity tests of Section 215. If such a finding is made, the service or facility which has been deregulated may only be offered by a fully separated subsidiary. After the four-year period specified in Section 219(f)(3)(B)(iii), a fully separated subsidiary may provide any interexchange telecommunications service or facility, except basic telecommunications service on an unregulated basis.

Section 219 provides that terminal equipment and terminal devices of a type being offered by the dominant carrier on date of enactment may continue to be offered under regulation for only four years following enactment: such equipment may be offered on an unregulated basis through a fully separated subsidiary at any time before that date if final assembly, as well as sales, marketing, maintenance and operations, is performed by fully separated subsidiary or a non-affiliated entity. After this four-year period, all terminal equipment and devices must be offered exclusively through a fully separated subsidiary. New terminal equipment and devices of a type not being offered on date of enactment may not be offered under regulation, and may only be offered through a fully separated subsidiary if final assembly and research and development are also done there.

New classes of non-basic interexchange telecommunications services and facilities may be offered under regulation for three years following enactment. After that time period, new non-basic services must be offered exclusively by the fully separated subsidiary. Those services under regulation on date of enactment and those new classes of services offered under regulation during the three-year period following enactment will remain regulated until deregulated by the Commission pursuant to the effective competition or public convenience and necessity test of Section 215. After such a finding, these services may only be offered by a fully separated subsidiary, unless they are reregulated by the Commission.

Services, facilities, and products incidental to telecommunication may not be offered under regulation except for terminal equipment or devices of a type being offered by the dominant carrier on date of enactment. These would be services such as data processing services and products such as main frame computers which may be offered only through a fully separated subsidiary.

Section 214(a)(3)(A) further provides that if AT&T's 1956 Consent Decree is eliminated, AT&T could still provide services, facilities, and products on an unregulated basis but only through a fully separated subsidiary which meets the requirements of this section.

Section 214(c)(1) contains the conditions of separation that must exist between the dominant carrier, any affiliated organizations, and any fully separated subsidiary.

The first major requirement of separation is contained in Section 214(c)(1)(B) which provides that not more than one member of the board of directors of the fully separated subsidiary may also be a member of the board or boards of the dominant carrier or any affiliated organization. Additionally, the fully separated subsidiary is prohibited from having any officers or employees in common with the dominant carrier or affiliated organization. Transfers of employees between such entities is not barred unless it violates Section 219(a)(4) or rises to the level of effectively having employees in common.

Section 214(c)(1)(C) provides that a fully separated subsidiary must have at least 5 members on its boards of directors. This provision is important because it insures at least four additional directors on the board of a fully separated subsidiary.

Section 214(c)(1)(D)(i) specifies that a fully separated subsidiary must maintain its books, records, and accounts separately from the books, records, and accounts of the dominant carrier and any affiliated organization. Furthermore, these books, records, and accounts must identify all of those transactions between the fully separated subsidiary and the dominant carrier and any affiliated organization which are required by Section 219(a)(1) to be conducted pursuant to contract.

Section 214(c)(1)(D)(ii) requires the fully separated subsidiary to prepare financial statements in accordance with Federal financial reporting requirements which are applicable to publicly held corporations. The fully separated subsidiary is not required to file such statements with any Federal agency but only to maintain financial statements in this manner. These two provisions are not intended to permit the Commission to audit or investigate the books of the fully separated subsidiary whenever it wishes. Rather, the provisions exist to aid the Commission only in a section 214(b) proceeding or in the exercise of its enforcement authority under sections 219(d) or 214(c)(2).

Section 214(c)(1)(D)(ii)(II) specifically provides that the requirements of the section in no way affect the manner in which the fully separated subsidiary is permitted to file returns for Federal income tax purposes.

Section 214(c)(1)(E) provides that the fully separated subsidiary may not have a financial structure in common with the dominant carrier or any affiliated organization. This means that the subsidiary must have its own stock and bonds (which can be owned by its parent), its own debt and bank accounts. Section 219 deals with initial and future transfers of assets to the fully separated subsidiary.

Section 214(c)(1)(F) provides that the fully separated subsidiary may not own any facilities or other property in common with the dominant carrier or any affilated organization. This provision does not prohibit lease or the joint use of facilities or property, but if lease or joint use occurs such use must be consistent with the provisions of Section 219(a)(1) which requires that this conduct be subject to contract and fully compensatory and auditable. Secondly, such use must meet the conditions of Section 219(a)(3)(A) which provides that the fully separated subsidiary cannot be granted any preference based upon affiliation. If this use is found by the Commission to be subsidized, anticompetitive or preferential, the Commission may use its Section 219(a)(4) authority to bar this relationship.

Under the provisions of Sections 214 and 219 basic research may continue to be performed by any affiliated organization. This means that Bell Telephone Laboratories could continue to perform basic research for all entities of the Bell system.

"Basic research" within the terms of this legislation means research projects which represent original investigation for the advancement of scientific knowledge and which do not have any specific commercial objectives.

The costs of basic research must be properly charged to the various entities of the Bell system including any fully separated subsidiary. Basic research must be performed under contract, and must be fully compensatory and auditable in accordance with the provisions of Section 219(a)(1), must be properly allocated in accordance with Section 219(d), and may be barred by the Commission with respect to the fully separated subsidiary to the extent the Commission finds such research anticompetitive, or believes that such a bar is necessary to protect the users of regulated telecommunications services from subsidizing unregulated, competitive activities. The Bell System's existing license fee practices have been found by at least one state commission (California) to impose unjustifiable costs on users of regulated services.

Section 214(c)(1)(G) provides that consistent with the transition provisions of Section 219, the fully separated subsidiary must carry out directly its own marketing, sales, maintenance (including customer service), operations, manufacturing development and applied research. A fully separated subsidiary is permitted to engage in institutional advertising in conjunction with the dominant carrier or affiliated organization and to use their logo so long as the fully separated subsidiary pays its fair and proper share of those advertising costs or the value of the logo in compliance with the provisions of Section 219(d) and Section 254.

The term institutional advertising specifically does not include any advertising related to a service, facility or product whether regulated or unregulated. Such activities must be performed by the fully separated subsidiary on its own behalf and with its own funds.

Section 214 also contains sanctions for violation of this section or Section 219. These provisions are found in Section 214(c)(2)(A) through 214(c)(2)(F). The sanctions under Section 214 are essentially three: (1) reregulation; (2) cease and desist orders from the Commission; and (3) forfeiture penalties.

There is a range of options available to the Commission if a fully separated subsidiary violates any of the requirements established in Section 214(c)(1) or Section 219; or if the dominant carrier violates any of the requirements of Section 219 and the violation affects the activities of the fully separated subsidiary; or if the dominant carrier or any affiliated organization violates the standards governing those relationships specified in Section 219.

First, with respect to any specified telecommunications service, facility, or product (e.g., private line service), if the Commission determines that a fully separated subsidiary has failed to comply with any of the requirements in Section 214(c)(1) or Section 219, the Commission is empowered to reregulate that specific telecommunications service facility or product. If the Commission determines that a dominant carrier has violated any of the requirements in Section 219 and that the violation affects the activities of the fully separated subsidiary with respect to a specific telecommunications service, facility, or product, the Commission may assert regulation over the specific telecommunications service, facility, or product in question. If the Commission determines that a dominant carrier or any affiliated organization has violated the requirements of Section 219 with respect to the offering of a specific telecommunications service, facility, or product, the Commission may assert regulation over that telecommunications service, facility, or product.

The assertion of regulation provided for in Section 214 is in addition to any other remedial action which the Commission has under the Act. If the Commission uses its authority to reassert regulation, the specific telecommunications service, facility, or product shall remain under regulation until such time as the Commission is satisfied that a failure to comply no longer exists.

For violations of Section 214(c)(1) or Section 219, violations of Section 219 by the dominant carrier which affect the activities of a fully separated subsidiary, or violations of Section 219 by a dominant carrier or affiliated organization, the Commission may either order the fully separated subsidiary to cease offering the affected service, facility, or product incidental to telecommunications, or impose a fine of up to $500,000 against the dominant carrier, affiliated organization, or fully separated subsidiary. The Commission may also order both a forfeiture penalty and a cease and desist order.

The employee protection provisions of Section 214(d) constitute the last major element in this section. Because this legislation requires significant restructuring of AT&T, including the establishment of a new corporate entity to which many existing employees of AT&T will be transferred, the Committee believed it necessary and appropriate to protect the rights of transferred employees. The Committee felt strongly that employees should not be adversely affected by any restructuring of the Bell System. These provisions deal with matters of salary, employment, wages, seniority rights, travel and moving expenses, pension, health, disability, death, and insurance benefits for those employees transferred to the fully separated subsidiary.

D. SECTION 218

Section 218 permits the dominant carrier, AT&T, through one or more fully separated subsidiaries, at the option of the Dominant Carrier to offer on an unregulated basis any telecommunications service, product, or facility or service, facility, or product incidental to telecommunications notwithstanding the terms of any existing Consent Decree. There are three exceptions to this general rule which relate to: (1) mass media services and products, (2) cable services, and (3) alarm services.

It is the Committee's intent that the terms "telecommunications service, facility, or product" and "service, facility or product incidental to telecommunications" be interpreted broadly. The Committee seeks to promote market competition and deregulation and to minimize regulatory disputes over whether or not a particular service, facility, or product may be offered on an unregulated basis. A broad interpretation of these terms can help to eliminate many of the problems which have resulted from the merging of telephone technology and computer technology.

MASS MEDIA SERVICES AND TECHNOLOGY

This first exception in Section 218 states that the dominant carrier, affiliated organizations, and fully separated subsidiaries may not use their own facilities to offer (either on a regulated or unregulated basis) any mass media service or mass media product in their intraexchange service areas. This exception reflects the Committee's belief that an entity with a dominant market share in the provision of its facilities should not control both those facilities and the content of or access to the information that flows over the facilities. Moreover, the Committee's motivation in modifying the 1956 Consent Decree, and thereby freeing AT&T to compete in some markets from which it had voluntarily excluded itself, was primarily the convergence of telephone and computer technologies and the regulatory problems that convergence raised. This rationale does not extend to mass media.

The term "mass media service" includes, but is not limited to, television and radio broadcasting, pay television, and printed or electronic publications. Printed or electronic publications include newspapers and periodicals as well as any service or product like or similar to all or part of the function provided by a newspaper or periodical. The Committee intends that these terms be given a broad interpretation.

The mass media service exception, therefore, prohibits the dominant carrier, affiliated organizations and fully separated subsidiaries from originating such things as news, editorials, features, sports, and electronic advertising over which they would have content, editorial, or access control. A fully separated subsidiary is not prohibited from providing traditional printed yellow pages which include advertising nor is it or a dominant carrier prohibited from offering and providing the facilities for any mass media service or product. A fully separated subsidiary may also provide electronic directories if they are limited to name, address, number, and business category. A fully separated subsidiary must be a transparent highway or storage depot between the service provider and user. Thus, neither a local Bell telephone company nor a fully separated subsidiary could provide a transaction service where customers could order goods or complete other transactions with third parties and be billed directly by the Bell company or subsidiary.

The fully separated subsidiary and the dominant carrier may advertise and promote the use of its facilities for the use of others providing mass media services, but it may not originate the service itself. The fully separated subsidiary and the dominant carrier may also promote the services of those persons who are using its facilities for mass media services or mass media products.

Furthermore, whenever a dominant carrier, affiliated organization, or fully separated subsidiary provides the facilities for the provision of any mass media service or product, they must make such facilities available to any person who originates or otherwise provides mass media service or mass media products on a non-discriminatory basis, so long as that person makes a reasonable request for the use of such facilities.

CABLE SERVICE

The second exception to the general rule involves cable television service. By cable television service, the Committee intends to prohibit the offering by a dominant carrier, affiliated organization, or fully separated subsidiary on a regulated or unregulated basis of that service which has been provided by cable television systems. This would be the retransmission of television and radio broadcasting signals or program origination to multiple subscribers who pay to receive such services. There is no prohibition with respect to the provision of products or equipment which may be used to provide such service.

As with mass media services, there is no prohibition on the provision of facilities for cable service. The prohibition applies only to the offering of the service itself.

ALARM SERVICE

The third exception prohibits a dominant carrier, affiliated organization, or fully separated subsidiary from offering on a regulated or unregulated basis any alarm service to the public. Alarm service means both burglar alarm service and fire alarm service or both.

A fully separated subsidiary is not precluded from manufacturing or causing to be manufactured and then offering burglar and fire alarm equipment. This equipment falls within the terms "terminal equipment or devices" which a fully separated subsidiary may offer directly to consumers as long as it complies with the other provisions of the Act such as Sections 214, 218, and 219. The fully separated subsidiary may also provide environmental sensing services as well as emergency warning systems to states and municipalities.

As with mass media service and cable service, facilities can be offered by the dominant carrier or fully separated subsidiary to any unaffiliated persons who may use such facilities to provide to the public burglar or fire alarm systems.

Section 218(b)

This subsection clarifies that subsection (a) is a grant of additional authority which is contingent upon meeting the requirements of Section 219 and the establishment of a fully separated subsidiary. A dominant carrier or affiliated organization can provide services, facilities or products that could not otherwise be provided under the terms of the 1956 Consent Decree prior to enactment so long as it complies with the terms of this subsection. This subsection complements subsection (d) which preserves the authority contained in the decree with respect to prior permitted activities except for those alarm, cable, mass media service and mass media products prohibited in subsection (a).

Section 218(c)

This subsection states that the authority of the Commission to establish rules or requirements relating to the offering of cable television service by intraexchange carriers or any entity affiliated with such carriers, directly to subscribers, and the rules of the Commission respecting the offering of that service in effect on the date of enactment are left undisturbed by the legislation because the Committee supports their intent. Additionally this legislation is consistent with the status of federal regulatory jurisdiction over cable television as determined by the federal courts [See *FCC* v. *Midwest Video Corp. et. al.*, 440 U.S. 689 (1979).] and nothing herein is intended to affect the authority of the Commission to require cable television systems to carry local television stations. Such regulation is "reasonably ancillary" to the Commission's responsibilities for the regulation of broadcasting, and the Commission's authority to impose signal carriage requirements is unaffected by this Act. Further, nothing in this legislation is intended to affect any authority of any State or local government regarding cable television, as such authority exists on the date of enactment of the Telecommunications Act of 1980 whether or not it is being exercised. The Committee's intent in H.R. 6121 was to address common carrier issues, not those of broadcasting or cable television.

Section 218(d)

Except for those alarm, cable, and mass media services and products prohibited in subsection (a), this section does not prohibit continued provision of services, facilities or products allowed under the terms of, and in the manner provided for by, the 1956 Consent Decree, even though those services, facilities, or products are not specifically addressed in this or other sections of this Act. This subsection clarifies that modification of the consent decree does not limit or restrict the manner or extent to which a dominant carrier or affiliated organization subject to the decree can continue in any activity which was lawful and allowed under the decree prior to passage of this Act. However, nothing in this subsection extends that authority to authorize or permit a dominant carrier, affiliated organization or fully separated subsidiary to offer incidental telecommunications services, facilities or products that are not otherwise authorized or permitted by the provision of other subsections, except that terminal equipment or terminal devices which remain under regulatory authority as provided in section 231(a)(3) can be provided under the provisions of this subsection.

Section 219

Section 219 offers a structural solution to the problems posed by the presence of the dominant carrier in both regulated and unregulated markets. The relations between entities in these two areas, if discriminatory or preferential, would be injurious to competition and to the users of regulated services. A primary example of this problem is cross-subsidies which could flow from regulated activities to unregulated activities.

STANDARDS FOR BUSINESS CONDUCT

Section 219(a)(1) contains the requirements pertaining to the relationship within the Bell System between a fully separated subsidiary and those of its affiliates involved directly or indirectly in regulated activities. The major area of concern is the possibility that cross-subsidies might flow to the fully separated subsidiary at the expense of regulated rate-payers and of fair competition. The principal mechanism for eliminating the possibility of such cross-subsidy is the requirement that business dealings between a dominant carrier or affiliate organizations (such as Western Electric or Bell Laboratories) and a fully separated subsidiary be conducted on a fully compensatory basis. To ensure compliance with this requirement, such transactions must be fully auditable. Transactions are fully compensatory where the prices specified in sales, leases, or other transfers cover all the costs involved, including a reasonable profit.

Section 219(a)(1) further requires that any conduct of business between a fully separated subsidiary and any other entity of the Bell System, except another fully separated subsidiary, shall be on a contract basis. The provision insures the auditibility of such transactions and guards against the possibility of undetected and unlawful cross-subsidies.

The Commission is empowered to make such contracts or portions of those contracts available for public inspection to the extent necessary to insure the proper enforcement of Section 219. The Committee recognizes that, due to Commission staff limitations, public knowledge of these contracts will be an invaluable aid to the enforcement of this section's goals. However, the Committee intends if the disclosure of a particular contract would have anticompetitive effects (such as a predisclosure of service, product, or market plans) or cause competitive disadvantage to the reporting company, such a contract should not be made available for public inspection.

Section 219(a)(2) further explains the underlying philosophy of subsection 1. The terms and conditions of transactions between regulated affiliated organizations and a fully separated subsidiary, so long as they meet the fully auditable and compensatory test, and absent a Commission requirement under subsection 4, or conditions of subsections (f)(2)(C) or (f)(2)(D), are not required to be provided to nonaffiliates.

Section 219(a)(3)(A) requires the dominant carrier or any affiliated organization, except for any person who owns or controls a dominant carrier, to deal with unaffiliated persons in a nondiscriminatory manner. This means that the dominant carrier or an affiliated organization cannot give any preferential treatment to a fully separated subsidiary. Rather, the dominant carrier or any affiliated organization must treat unaffiliated persons in the same manner as it treats its own fully separated subsidiary. Notwithstanding this requirement, an affiliated organization may elect to deal or not deal with nonaffiliates unless it is ordered to deal pursuant to subsection (a)(4).

When subassemblies or components are sold to a fully separated subsidiary after the respective 6- and 8-year transition periods specified in subsections (f)(2)(C) and (f)(2)(D), by affiliated organizations, these must be offered to all nonaffiliates which want them at the same rates, terms, and conditions as those given to a fully separated subsidiary. The Commission may bar such transactions pursuant to subsection (a)(4) if they become a pattern in violation of the goals of having the subsidiary perform its own functions or obtain products and services from unaffiliated entities.

Section 219(a)(3)(B) permits a dominant carrier, affiliated organization, and fully separated subsidiaries to exercise their independent, ordinary business discretion in dealings with non-affiliates and to be judged with respect to the prudence of such dealings under the ordinary standards and practices used by others in the industry. This means that they are free to make business judgments and decisions deemed reasonable by ordinary business persons acting in good faith in compliance with the provisions of this Act.

This provision, however, does not nullify the provisions of Section 216, which (1) requires the dominant carrier to furnish interexchange services and facilities which are subject to regulation upon reasonable request; (2) prohibits discrimination with respect to rates, terms, and conditions; and (3) prohibits unreasonable or anticompetitive restrictions.

The purpose, then, of this provision is to permit the use of independent, ordinary business discretion in such situations as a history of non-payment of debts by a potential customer. Another example would be a situation where a fully separated subsidiary refused to deal with a company that destroys the value of its trademark because of the way it handles or maintains equipment. Similarly, the fully separated subsidiary might also refuse to deal with another company which willfully and knowingly infringes upon its patents. For example, limitations in dealing with a firm on the verge of bankruptcy would be appropriate; in such a case, one might reasonably choose the option of dealing on a cash only basis. In essence, this provision sets out a standard of reasonable, nondiscriminatory dealing. The provision allows the same degree of judgment that a non-affiliate would have in dealing with another non-affiliate. The standard of "independent" means the judgment of the entity involved, unrelated to its affiliation with other entities of the dominant carrier.

Section 219(a)(4) empowers the Commission to regulate any dominant carrier and its affiliated organizations in order to prevent anticompetitive practices between these organizations and any fully separated subsidiary and to protect the users of regulated telecommunications services from the burdens of cross subsidization if this power is needed to supplement the general rule contained in subsection (a)(1).

It is the intent of this provision to give the Commission four powers. First, if the Commission finds that a price charged or paid by the dominant carrier or an affiliated organization in any transaction with a fully separated subsidiary is so low as to violate the fully compensatory standard in Section 219(a)(1), it can order the dominant carrier or affiliated organization to charge or pay a fully compensatory price.

Second and conversely, if the price is unreasonably high, the Commission can order a dominant carrier or affiliated organization to charge or pay a lower price.

Third, if the Commission determines that there are anticompetitive practices occurring between a fully separated subsidiary and a dominant carrier or affiliated organization, it can bar those types of dealings between the fully separated subsidiary and the dominant carrier or affiliated organization.

Fourth, the Commission may require a dominant carrier or affiliated organizations to provide to unaffiliated persons the same products, service, and facilities at the same rates, terms, and conditions provided to the fully separated subsidiary.

In utilizing the powers granted in this subsection (a)(4) the Commission may impose requirements only upon the dominant carrier and affiliated organizations and may not impose regulatory requirements or give orders or directives to any fully separated subsidiary. Furthermore, the grant of regulatory authority over affiliated organizations found in this subsection (a)(4) is solely for the purpose of dealing with transactions between that affiliated organization and a fully separated subsidiary where there is a violation of the relationship permitted in subsections (a)(1), (a)(2), (a)(3) and other specifically permitted activities.

Section 219(a)(5) recognizes and preserves the management's right and legal obligation to manage and direct the totality of a corporation's operations. Since H.R. 6121 does not require divestiture, this subsection merely emphasizes the obvious.

INFORMATION FLOWS

Section 219(b) requires that dominant and regulated carriers and affiliated organizations disclose certain information about the telecommunications networks controlled and operated by those carriers. The provisions are intended to balance the need of persons desiring to interconnect with regulated networks for timely and accurate technical information, with the need of dominant and regulated carriers to design and operate regulated networks with a minimum of disruption and to encourage innovation without compromising proprietary developments. The subsection is also intended to prevent unfair advantages from flowing directly or indirectly to a fully separated subsidiary from a dominant carrier, consistent with subsection (a)(3). The information provisions assure that all persons desiring to use these carriers' networks to provide service or to sell products for interconnection have equitable access to information about those networks, whether or not they are affiliated with a regulated or dominant carrier.

A dominant carrier is required to file with the Commission (1) technical interface information describing the physical and electrical characteristics of the regulated network at points of interconnection with those who offer services that depend on use of the regulated network; and (2) operational protocols at these points of interconnection. Operational protocols are the rules by which interconnection or associated equipment interact with each other or a network by means of electrical signals or manual operations.

Information furnished by a dominant carrier regarding technical interfaces and operational protocols of the regulated network is to be kept current by notifying the Commission of changes in the interfaces or protocols that result from: construction to extend or expand the network; modification of existing facilities, including operations controlled by software; or introduction of newly designed services, facilities, or equipment. Dominant carriers are to inform the Commission of such changes when they have been adopted for implementation in the regulated network or for which a decision has been made to adopt or implement. Nothing in this provision should be construed to require regulated carriers to furnish the Commission with preliminary plans or concepts for network changes. Thus, a dominant carrier is not required to furnish information about preliminary plans or alternative concepts that may arise during the normal course of a dominant carrier's business or during the process of specific development and design of equipment where those plans or concepts have not yet ripened to the point that their incorporation in the network is either likely or foreseeable.

Subparagraph (C) requires all regulated carriers, whether dominant or not, to furnish the Commission with summaries of construction programs whose implementation in regulated networks would affect the functioning or offerings of any persons providing service by interconnecting with those networks or by the use of alternative networks. For example, information pertaining to the planned availability of facilities in the regulated network, such as the number and type of new circuits planned for a market or submarket, must be included in the reports. This provision does not require any regulated carrier to furnish preliminary or tentative plans to the Commission, but does require them to inform the Commission of plans for change once such plans have been adopted.

Subparagraphs (D) and (E) recognize the possibility that there may be additional classes of technical information not enumerated in the foregoing provisions regarding regulated networks which should be promptly disclosed. Subparagraph E addresses other information about a regulated network which, when provided to an equipment manufacturer or designer, could allow more effective or efficient operation of that equipment when interconnected to such network. The FCC should only consider requiring disclosure of such information, based on the standard of subsection (a)(3), in instances where it is being supplied to the fully separated subsidiary or to activities of an affiliated organization which benefit the subsidiary by a dominant carrier. The Commission is empowered to require the regular disclosure of such information upon a finding that such disclosure is necessary to ensure ready and continued interconnection with regulated networks, or to prevent preferences being granted to any fully separated subsidiary by prior or exclusive disclosure of information about the regulated network.

In requiring dominant carriers to furnish information on technical interfaces and operational protocols, the Committee does not intend to stifle innovation. Indeed, the Committee intends exactly the reverse: to encourage innovation and to provide a mechanism for advising all parties of the impact of a technical change. In particular, information on technical interfaces or operational protocols furnished by dominant carriers is not to be interpreted by the Commission or other parties as an immutable standard but, instead, as a representation of the capability and means of access to the dominant carrier's network at a given point in time. Thus, the provisions require dominant carriers to include in their regular reports any changes that have been adopted as the result of technical advances or other factors.

The Committee recognizes that the facilities and services of regulated carriers may change rapidly as technology advances. For this reason, the Commission is empowered to establish procedures by which dominant carriers will furnish information on regulated network capabilities, technical interfaces, and protocols and by which interested parties may gain access to information furnished.

Section 219(b)(2) assures that the Commission has the authority to withhold the furnishing of information covered in paragraph (1) when, after consultation with the appropriate agency, it determines that the release of such information, or any part of the requested information, is detrimental to or could jeopardize the national defense and security or emergency preparedness of the nation. The Commission shall balance the private interests of applicants against any harm that it might have on public protection and security.

Section 219(b)(3) recognizes that there are other classes of competitively valuable information which a dominant carrier acquires solely by virtue of its provision of basic telephone service. The provision is intended to assure that a fully separated subsidiary does not gain a competitive advantage by reason of preferential access to such information. This provision eliminates the possibility of such preferential access by placing nonaffiliates on the same footing as the fully separated subsidiaries. Thus, dominant carries may not disclose directly or indirectly to a fully separated subsidiary commercial information such as lists of interconnecting customers. However, the Commission may establish a procedure under which such information is made available to all parties in a non-discriminatory fashion.

Section 219(c) implements the policy and purposes of subsection (a) by authorizing the Commission to release to private parties internal accounting documents prepared by the dominant carrier and affiliated organizations. Any party may secure such information by establishing that there is good cause to believe that Section 254 has been violated, for example because a dominant carrier or affiliated organization has created an unlawful cross-subsidy benefitting a fully separated subsidiary. The Committee does not intend that this provision should give rise to "fishing expeditions" by competitors or disgrauntled private parties. Instead, the Commission should base its finding of good cause on objective data such as a comparison of Section 219(a)(1) contract prices with industry price lists for comparable services, facilities, or products, and not on unfounded speculation.

Section 219(d)'s purpose is to provide full authority to the FCC to enforce the accounting rules of Section 254 or Section 219(e)(1), for example to prevent dominant carriers or affiliated organizations from including in the expense or rate base figures of rate cases commenced after the date of enactment, costs which were incurred in connection with services, facilities, or products which are required to be offered exclusively by a fully separated subsidiary.

The Committee is aware that there are certain services and products which were under development prior to enactment of this legislation but which have not yet been offered to the public. In these instances the costs of research and development incurred before the date of enactment for these services and products must be assigned to the fully separated subsidiary. Every reasonable effort must be made to ascertain these past research and development costs. Similarly, all other costs incurred prior to the subsidiary's formation which benefit the subsidiary must be charged to it.

The fully separated subsidiary, once it is established and approved by the Commission pursuant to subsection (e), must assume all future costs associated with such services and must reimburse regulated carriers for past manufacturing, and research and development costs. This provision complements subsection (f)(3)(B)(iv) which permits research begun prior to formation of a fully separated subsidiary to continue without disruption of the funds available for its support.

PRECERTIFICATION OF A FULLY SEPARATED SUBSIDIARY

Section 219(e)(1) provides the mechanism by which the Commission may monitor the creation of any fully separated subsidiary of the dominant carrier to ensure that it complies with the applicable provisions of this Act. The dominant carrier must file a plan with the Commission containing three principal parts:

1. An accounting system designed to ensure that there are no improper cross-subsidies flowing from regulated operations to the fully separated subsidiary or to activities of the dominant carrier or any affiliated organization which benefit the fully separated subsidiary (Subparagraphs (A) and (B));
2. A description of the way in which the fully separated subsidiary complies with the specific separation requirements called for in sections 214 and 219;
3. A description of the assets, including capital and good will including logos, which, at the time of the filing of the plan, are proposed to be transferred to a fully separated subsidiary; and the value at which those assets have been appraised (Subparagraph (D)).

The Committee recognizes that under current laws, many, if not all, state commissions have authority to make valuations and to determine the nature and amount of the consideration which should be paid when assets are transferred or removed from the rate bases of utilities subject to their jurisdiction. Recognizing, however, the scope of the asset transfers involved in the reorganization contemplated by this Act, the Committee has vested the Commission with preemptive authority so as to simplify, to the maximum extent possible, an enormously complex corporate reorganization.

Section 219(e)(2) prescribes the procedural requirements applicable to the plan required under subsection (1). The Commission is required to move promptly and expeditiously in its review of the carrier plan and is granted 180 days within which to approve or disapprove the proposed plan. In order to avoid lengthy proceedings, the Commission is directed, where it disapproves a plan in whole or in part, to identify with precision the basis for its disapproval so as to permit the carrier submitting the plan to promptly make those changes which will ensure approval by the Commission. The Committee intends that both the Commission and those carriers subject to these provisions shall move quickly in the creation of fully separated subsidiaries, and that approval shall not be withheld for frivolous reasons.

During this applicable 180-day period, the Commission shall give public notice of the receipt of this plan so as to permit public comments on it. The Commission also shall seek the opinion of the Attorney General on the plan. The Attorney General is not required to submit comments on the plan.

If the Commission disapproves the plan, it will have 60 days within which to review the revisions to the plan submitted by the dominant carrier which will be designed to correct the deficiencies previously cited by the Commission. The dominant carrier may only take advantage of this expedited timetable if its revised plan is restricted to responses to the FCC's specifications of deficiencies. If the Commission disapproves the revisions, the carrier once again may resubmit and the procedures specified in Section 219(e)(2)(A)(ii) will once again be followed.

Section 219(e)(3) recognizes that after the filing of the reorganization plan and its approval by the Commission, circumstances may require that changes be made in the plan and that some assets will be transferred at later dates (such as component facilities). This subsection recognizes that possibility and ensures that the Commission has appropriate authority to monitor such changes. Thus, any carrier which has filed a plan for the creation of a fully separated subsidiary must provide the Commission with notice of any minor changes or revisions. In such a case, the carrier may proceed with the plan as modified unless the Commission directs otherwise (Subparagraph (A)). Where the carrier finds it necessary to make significant revisions in the plan as originally filed, or it wishes to transfer significant assets to the subsidiary, it must obtain the Commission's prior approval before acting.

TRANSITION TO FULLY SEPARATED SUBSIDIARY

Section 219(f) provides for the orderly separation of the research, development and manufacturing activities of a dominant carrier and its subsidiaries which directly support products and services in the regulated and deregulated sectors. The Committee believes that the transition should occur as speedily as possible. The goal is to avoid any possible direct or indirect cross-subsidies of unregulated activities by regulated activities without imposing harsh and undue economic penalties on any dominant carrier, its employees, or ratepayers. The subsection balances these interests by taking account of the complex technological and industrial infrastructure which supports the delivery of telecommunications services, by requiring visible and easily monitored changes in corporate structure, and by providing for strong regulatory oversight of the entire process.

The Committee extensively discussed the research, development and manufacturing relationships that exist in the telecommunications industry today, the technological forces responsible for the dramatic changes that have been taking place in that industry, and the likely requirements for continued progress in the future. The Committee recognizes that it will take a period of time to achieve the desired full separation between what the Act specifies as regulated and unregulated operations insofar as this affects existing activities.

The transition requirements of this subsection lead to a fully separated subsidiary with its own sales, marketing, maintenance, operations, applied research, development and manufacturing operations. The 8-year transition period is marked by four clearly defined milestones, each of which requires a significant degree of separation between the subsidiary, the dominant carrier and its affiliated organizations. These milestones define the maximum time period allotted for the various structural changes. The legislation provides incentives to complete the restructuring to a fully separated, vertically integrated subsidiary as rapidly as possible. During the transition period, the fully separated subsidiary must pay a fully compensatory amount to the dominant carrier or its affiliates for all products and services which it acquires from them. Full investigative and enforcement regulatory authority is vested in the Commission to eliminate cross-subsidy in the limited integrated operations permitted during the transition period. The basic research activities of a scientific, non-product-specific character presently carried out by Bell Laboratories will continue with appropriate funding from regulated and unregulated activities.

Three years from date of enactment the fully separated subsidiary may offer terminal products on a deregulated basis if all sales, maintenance, operations, customer service and marketing functions related to these are conducted by the fully separated subsidiary or obtained from unaffiliated sources. If final assembly is also treated in this fashion, deregulation can occur at any time (following FCC precertification) between date of enactment and four years after.

Section 219(f)(2)(A) specifies the first phase of the transition period and provides the incentive and the mechanism for achieving the most significant step toward a more competitive industry structure. For a dominant carrier to take advantage of the deregulation provisions of the Act, it must organize a fully separated subsidiary and, no later than four years from date of enactment, remove the final assembly function for products required to be offered exclusively by the fully separated subsidiary from any manufacturing affiliate of the dominant carrier.

In the context of this legislation the term "final assembly" refers to those significant manufacturing operations which, when completed, result in a finished product ready for delivery to a customer. These operations give a product its unique physical features, functions and form. Typically such operations include the wiring of subassemblies, cables and connectors into cabinets or housings; installation of displays, switches, controls, keyboards, faceplates and similar hardware; testing of completed units; programming and packaging.

This provision does not require the dominant carrier to implement each step of the separation in a single transaction. The legislation permits the dominant carrier to avoid the dramatic upheaval of shifting several geographically or functionally distinct organizations at the same instant but limits the availability of deregulation to only those services, facilities and products where the required separation has been achieved.

Section 219(f)(2)(B) also provides that after the fourth anniversary of the date of enactment, a further separation of regulated and unregulated activities is required. All applied research which is product, service or facility specific research, development, and software programming for products and services required to be offered by a fully separated subsidiary must be provided by a fully separated subsidiary or acquired from unaffiliated sources. This means that after the fourth anniversary of enactment a fully separated subsidiary may not use the dominant carrier or affiliated organizations as a source of research and development directed to terminal equipment, terminal devices, unregulated telecommunications services, facilities or products, or unregulated services, facilities or products incidental to telecommunications which must be offered by the fully separated subsidiary.

"Applied Research," in the context of this legislation, is research directed to the discovery of new scientific knowledge and which has commercial objectives with respect to either products, services, or processes.

Examples of applied research include efforts to make a better or cheaper PBX, Keyset or data terminal. If this research would also be applicable to a No. 4ESS, for example, which is used primarily for the regulated network, this would still be applied research. After the 4-year transition period, research for the No. 4ESS could be performed by Bell Labs for the regulated network, but could not be shared with the fully separated subsidiary. Rather, the subsidiary would have to do its own research. Basic research, on the other hand, would be how to draw fibre optical cable. This would be without reference to any product, service or facility. If this line between basic and applied research is violated, the Commission under its authority under 219(a)(4) could bar any dealings between Bell Labs and the fully separated subsidiary entirely, or require that the R&D be provided to all others.

Section 219(f)(2)(C) requires a further separation of manufacturing activities by the sixth anniversary of enactment. All subassemblies incorporated in products required to be offered by a fully separated subsidiary must be provided by a fully separated subsidiary or by nonaffiliates.

At this point, research and development for subassemblies incorporated in products required to be offered by a fully separated subsidiary must also be done by a fully separated subsidiary or by a nonaffiliate.

Subassemblies within the meaning of this Act and for the purposes of current technology are combinations of components and other small devices which have a unique identity, are convenient servicing units and perform discrete functions but which are not, by themselves, end products offered for sale to customers. Examples of subassemblies in current technology include keyboards, displays, power supplies, and circuit packs.

Section 219(f)(2)(D) The eighth anniversary of enactment marks the end of the transition period. After that date all components incorporated in products required to be offered by a fully separated subsidiary must be provided by a fully separated subsidiary or by nonaffiliates. Research and development of components used by a fully separated subsidiary must be done in a fully separated subsidiary or by nonaffiliates.

A "component" within the meaning of this Act is a basic part of a subsystem or piece of equipment. Examples of components in current technology include wire, cable, microprocessors, printed wiring boards, integrated circuits, capacitors, resistors, and liquid crystal display devices.

At the end of the respective 6- and 8-year transitions for subassemblies and components, the subsidiary may buy components and subassemblies from a dominant carrier or affiliated organization if these are also offered to all other interested parties at the same rates, terms, and conditions. It is the Committee's intent that these provisions not be used to thwart the transitional requirements. The Commission shall prohibit such sales under subsection (a)(4) if it finds that they are in violation of the requirements.

Section 219(f)(2)(E) reflects the Committee's recognition that if, despite the good faith efforts of involved carriers, delay is unavoidable and beyond the control of the dominant carrier, the Commission is empowered to extend these dates for a reasonable time. Reasons for extension would include Acts of God, War, severe labor strikes and severe economic depression.

The Committee emphasizes two considerations. First, its imposition of deadlines based on four categories of activities (final assembly, applied research and development, subassemblies, and components) was based on a review of the activities conducted in AT&T facilities today. In resolving disputes over which category an activity fits into, the Commission should be guided by this objective standard, not a theoretical definition of "component" or "subassembly." Second, given the rapid development of technology, the Committee recognizes that the terms and concepts used will, in the future, be subject to redefinition by the Commission, i.e., flexibility will be necessary.

In addition to the foregoing requirements and in order to provide additional assurance that cross-subsidy from regulated activities does not nullify the competitive purposes of this Act, section 219(f)(2)(F) imposes additional conditions on dealings between fully separated subsidiaries and dominant carriers or affiliated organizations.

Subparagraphs (i) and (ii) govern any transactions during the time periods set forth above in which a fully separated subsidiary acquires from an affiliated organization telecommunications equipment, products, or services. The underlying premise of these subparagraphs is that cross-subsidies brought about by the prices charged by an affiliated organization to a fully separated subsidiary can usually be detected by comparing those prices with the prices at which comparable products, subassemblies, components, or services are transferred inthe marketplace between unaffiliated corporations. Thus, in any case in which a fully separated subsidiary acquires such items from an affiliated organization, the price must be no less than that at which comparable items are transferred between nonaffiliates. If sales at a lower price are desired, the affiliated organization and the fully separated subsidiary will have the burden of justifying the price to the FCC by showing lower direct costs associated with the provision of such items. Overhead may not be considered.

Section 219(f)(3)(B)(i) provides that if the dominant carrier, its affiliated organizations or subsidiaries, commences construction of a new manufacturing facilities after the Commission approves a plan for the subsidiary and, if those facilities are constructed to manufacture products, subassemblies, or components required to be offered by a fully separated subsidiary, then those facilities shall be owned and operated by a fully separated subsidiary.

Section 219(f)(3)(B)(ii) requires that a fully separated subsidiary is not permitted to provide telecommunications services and facilities to customers which are essentially the same as existing interexchange offerings of the dominant carrier or its affiliates for four years following enactment unless the Commission determines, by procedures specified in the Act, that effective competition exists in that particular market or submarket, or that the public convenience and necessity shall be served.

Section 219(f)(3)(B)(iv) specifies that over and above the four-year and other limitations cited above, a fully separated subsidiary may not provide services, facilities or products incidental to telecommunications (other than terminal equipment and terminal devices) unless conditions specified for the four-year milestone are met. Moreover, research and development for specific services, facilities or products of this type commenced after the FCC has approved a plan for a fully separated subsidiary must be done in a fully separated subsidiary or obtained from the outside, even if the fully separated subsidiary is not yet ready to offer these services, facilities or products to customers. This requirement provides an incentive for the dominant carrier to move development activities which might lead to new offerings incidental to telecommunications to a fully separated subsidiary as quickly as practicable. The intent is not to limit the spectrum of innovative goods and services available to customers nor to penalize the dominant carrier, but to assure that regulated offerings do not subsidize unregulated offerings. Moreover, no transition is needed for new activities. This provision does not require that research and development efforts being carried out on the date of enactment and which are funded by regulated carriers must cease solely because the services involved will be offered by a fully separated subsidiary. Instead, once a fully separated subsidiary is proposed, and is accepted by the Commission as meeting the conditions of this Act, it must assume all funding obligations of this kind (pursuant to subsection (d)) must make an appropriate reimbursement to the regulated carriers for prior costs.

Section 219(f)(4)(A) provides that this transition period be as orderly as possible and assures continuity of service to subscribers, especially to subscribers in rural areas and the smaller population centers, by stating that the dominant carriers may continue to offer terminal equipment and terminal devices of a type being offered by the dominant carrier on the date of enactment under regulation for up to four years after the date of enactment or until the conditions are met for offering such equipment without regulation in a fully separated subsidiary, whichever comes first.

Section 219(f)(4)(B) states that the dominant carrier may continue to offer interexchange telecommunications services until they are deregulated by the Commission. However, after the third anniversary of enactment, the dominant carrier or its affiliates shall not introduce any new class of interexchange telecommunications service which is not basic telecommunications service or intraexchange telecommunications service. These must be offered by a fully separated subsidiary unless the Commission asserts regulation through Section 214(b).

Section 219(g) prohibits the Commission from establishing any further requirements relating to the structure or organization of an affiliated organization or fully separated subsidiary, the activities of a dominant carrier required to be conducted by the subsidiary or the conduct of business between the fully separated subsidiary and a dominant carrier or affiliated organization, unless such requirements are consistent with Sections 214, 218 and 219.

The Commission is vested with substantial investigative enforcement, and rule-making powers to implement the provisions of this section, but it is not empowered to make any changes in the structural requirements specifically included in the legislation which are inconsistent with Sections 214, 218 and 219. This subsection's prohibition does not address activities of a dominant carrier not required to be offered by a fully separated subsidiary.

The two principal tasks facing the Commission in implementing the provisions of this section are to assure that the reorganization of the carriers mandated by this section is accomplished as smoothly and efficiently as possible without imposing undue economic or other disruptions on either the carriers themselves or the customers they serve, while forcefully implementing the protections for competition. particularly those which guard against cross subsidies.

In section 219(h), the Committee recognizes that in legislation of this kind Congress can do no more than outline the general framework within which it expects industry participants to conduct themselves and also to express its intent for the nature of competition in that industry. More is required, however, in order to provide specific guidance to those affected by this legislation. Therefore, the Commission is directed in this subsection to prescribe such rules as are necessary to carry out the intent of Congress as expressed in this section. This responsibility is coupled with a grant to the Commission of the full panoply of authority of enforcement powers which it enjoys under the provisions of the Telecommunications Act of 1980 and the remaining portions of the Communications Act of 1934.

ASSERTION OF REGULATION

Subsection 214(b) provides two procedures by which regulation may be imposed upon any dominant or any other interexchange carrier. The Committee recognizes that with new developments, the absence of competition, or for the public convenience and necessity, there may be the need to assert regulatory authority over certain interexchange telecommunications services. This subsection provides the Commission and the public with the procedural mechanisms necessary to assert regulation where appropriate. The Commission need not wait until a service is deregulated or until a new service is being offered in order to regulate it if it determines that the service will not be subject to effective competition, at least for a substantial period of time, or regulation will serve the public convenience and necessity.

Subsection 214(b)(1) provides the Commission with the authority to assert regulatory authority through the imposition of rules and requirements applicable to any dominant or interexchange carriers if the Commission determines that either effective competition does not or will not exist in such market or submarket or that the assertion of regulatory authority is necessary to serve the public convenience and necessity. It is the intent of the Committee that the Commission shall have the authority to apply any of the requirements and other provisions of title II of the Communications Act which specifically apply to dominant carriers to the concerned interexchange carrier: it is also the intent of the Committee that the Commission shall have the authority to apply this regulatory authority only to the extent necessary to carry out the purposes of this subsection. If the Commission determines that only certain aspects of its regulatory authority are necessary, then it need not apply all of its regulatory authority. For example, it could assert regulation over private line services only to the extent of requiring that they be offered through a new fully separated subsidiary or it could issue only structural or limited operational requirements. In acting on its own motion or the motion of any person, the Commission shall act only after notice and opportunity for hearing.

Subsection 214(b)(4) provides the Commission and the public with a temporary (one-year) assertion of regulation when the Commission determines that there is an imminent risk that a service or facility or class of service or facility wiil cease to be available in a particular market or submarket, or that there is an imminent risk that a carrier will not be able to continue offering a service or facility or class of service or facility because there is reasonable cause to believe that this is a result of any violation of the Communications Act by a fully separated subsidiary. The Commission must also determine that the imminent risk will be reduced or eliminated by exercising its authority under this subsection.

DEREGULATION

Provisions for deregulation

The bill, H.R. 6121, proposes to allow for deregulation of certain interexchange telecommunications services. Section 212 of the bill mandates that all new interexchange telecommunications services (other than basic telecommunications services, telecommunications services provided by any interexchange carrier in direct association with a dominant carrier, and certain telecommunications services provided by the dominant carrier) offered on or after the date of enactment of the bill will be on a deregulated basis.

Subsection 215(a)(2) and 215(a)(3) of the bill provide two procedures by which interexchange carriers may seek to deregulate interexchange telecommunications services. Subsection 215(a)(2) applies to dominant and regulated carriers (other than those regulated carriers that may file for deregulation under subsection 215(a)(3)). One year after the date of enactment of the bill, all regulated carriers seeking deregulation would have to file under this subsection. Subsection 215(a)(2) allows such carriers to seek deregulation of services or facilities or classes of services or facilities (other than basic telecommunications services). It is the intention of the Committee that the Commission will grant these applications for deregulation unless the Commission determines that the carrier has failed to meet its burden of proof that effective competition exists in the concerned markets or submarkets and that such application, if granted, would not serve the present of future public convenience and necessity. The Committee expects that the appropriate provisions of the Administrative Procedure Act will dictate how these filings will be processed by the Commission.

Subsection 215(a)(3) applies to any carrier which is subject to the regulatory authority of the Commission under section 212(a)(5) and creates a "fast track" method for deregulation of services existing on the date of enactment that exists only for the first year after the date of enactment of the bill. New services of these carriers are unregulated unless the Commission exercises its Section 214(b) authority. This provision requires the concerned carriers to give written notice of their filing for deregulation to all users of their services or facilities or classes of services or facilities. This subsection gives the Commission a total of 180 days (after notice is published in the Federal Register of its receipt of the concerned filing) to dispose of the filing. If the Commission fails to take final action with respect to such petitions within the time allocated, the filing is deemed to be granted. It is the intent of the Committee that these filings will be granted unless the Commission determines that the granting of the concerned petitions will not serve the present of future public convenience and necessity. The Committee intends that carriers or services without significant market power, such as MCI's Execunet or Southern Pacific's Sprint, be deregulated. The Committee recognizes that this "fast track" method provides for a short period of Commission review, and therefore the Committee has intentionally given the Commission a broad standard for reviewing the merits of the petitions so that the public and users will be given the maximum level of protection from unwarranted deregulation.

SECTION 216—INTERCONNECTION REQUIREMENTS

Section 216 represents a set of critical policy decisions by the Committee to carry out its intent that long distance and equipment markets be fully competitive. Prior to this time there has been extended litigation before the Commission and in the courts over the rights of persons other than established carriers to interconnect with those carriers. Some established carriers have historically opposed interconnection or have provided inferior technical connection. H.R. 6121 confirms and extends Commission and court decisions in ordering a fully open, equivalent and nondiscriminatory interconnection policy.

All local and regulated long distance carriers must interconnect with any telecommunications equipment, private telecommunications system, or long distance carrier which meets Commission technical standards and makes a reasonable request for interconnection. They may not discriminate among carriers or customers (including their affiliated entities) with respect to the rates, terms, or conditions of interconnection. The Commission is given complete authority to prevent such discrimination. It has exclusive authority over interconnection issues. Section 216(e) is written to ensure that state commissions retain the authority to set line charges for terminal equipment—but no more. Thus, no carrier or state commission can give any preference to the terminal equipment or long distance services of any carrier or vendor. Section 233 specifies how long distance carriers and private interexchange systems will pay for equal interconnection.

Section 216(a) describes another key protection for competition and against cross subsidization. Dominant carriers and regulated carriers must furnish their interexchange services and/or facilities to other carriers or private systems upon reasonable request—a common carrier requirement. Moreover, they may not discriminate or impose any anticompetitive restrictions on the furnishing or use of these services or facilities. The Commission is given complete authority over these dealings; it can set the manner, rates, terms, and conditions for provision of such services or facilities.

What this section means is that AT&T and other regulated carriers must make their regulated services and underlying facilities available to all persons on reasonable request, whether or not AT&T's fully separated subsidiary uses them. If it does, others must clearly have access at exactly the same rates, terms and conditions. Moreover, this section addresses not just discrimination, but also anticompetitive behavior. Thus if bulk rate pricing for the leasing of circuits, although non-discriminatory, has a result which harms competition, the Commission may bar or modify the terms of such sales. The Committee believes that any restriction on resale of services, is in general, unnecessary and should be barred.

As regards to a dominant carrier, this section should be read in part as a specification of the Commission's broad authority in section 219 (a)(4) to regulate all dealings by the dominant carrier and its affiliated entities on the one hand, with its fully separated subsidiar(ies) on the other.

With advice from the TJB, the Commission will have to determine expeditiously the point where interexchange service connects to local service. This line of demarcation is critical to the proper working of this section, the setting of appropriate access charges under section 232, and the related requirements of sections 219 and 254. Such selection is a highly technical issue which the Committee leaves to the expert agency. The Commission may choose the Class 4 office, the Class 5 office (toll side), or a combination of the two depending on local engineering or other factors.

SECTION 233—ACCESS CHARGES

Methods of reimbursing intraexchange carriers for the origination and termination of interexchange traffic have developed over the years in response to a variety of factors. The latest of these, competition, requires a fundamental restructuring of existing methods.

Following the Supreme Court's decision striking down board-to-board cost separations, [*Smith* v. *Illinois Bell Telephone Co.*, 282 U.S. 133 (1930)], long distance traffic has been required to bear a portion of local distribution costs. The system which has developed since that time is known as Separations and Settlements (or "division of revenues" among Bell System entities). The system is controlled by established carriers, primarily AT&T, with minimal regulatory supervision. It is characterized by a tenuous relation to actual cost causation, result orientation, a mixing of economics and social policy subsidies, and incentives for inefficient capital investment. Moreover, it was designed to serve the needs of carriers which, for the most part, did not compete with each other. Through this system flow billions of dollars each year.

With the advent of competition, a new element has been tacked onto separations and settlements. An ENFIA tariff, now in effect, has established rates and terms under which the new competing carriers gain access to AT&T's and GTE's local exchanges. It resulted from industry negotiations and few are satisfied with it. Some argue it is far too low; others that it is too high. It is widely recognized as being an interim measure. Other telephone companies not covered by ENFIA have filed different tariffs governing access.

Even before competition began in earnest, a series of significant questions were being raised about separations and settlements. Experts such as the chairman of the Council on Wage and Price Stability and the staff of NTIA have argued that the increasing burden of local joint and common costs allocated to long distance has often meant that decisions to invest in local facilities have not always been governed by considerations of cost-effectiveness, and that technological advances in long distance may not have been properly rewarded. At the same time, it appears that long distance provides a significant contribution, at least in rural areas, to the social need for keeping local rates reasonable and affordable.

Expanded competition has created a new set of problems. Years of argument and litigation have been devoted to the impact long distance competition would have on local rates. For example, for many years established carriers and others argued that local service was so heavily subsidized that local rates would have to be increased substantially if long distance rates were reduced to cost. Competing carriers have argued that while joint and common costs may be subsidized by long distance rates, local exchanges rates (particularly in the Bell System) subsidize long distance services in many other categories of cost or provide other, non-cost, advantages to long distance service.

The Committee has determined that no one knows precisely what the costs of various classes of service are, or the size or direction of subsidies. This view was confirmed by a report from the Commission's Office of Plans and Policy early this year. The Committee believes, however, that it is critical that these facts be determined for competition and deregulation to succeed, and for the continuation of local service at reasonable and affordable rates. The Committee believes that all users of basic telecommunications service benefit from the availability of universal service, which can be preserved only if local rates are maintained at reasonable and affordable levels.

The Committee has concluded that (1) there should be wide open competition in long distance, (2) all long distance carriers must be treated equally by intraexchange carriers, and (3) all long distance carriers should bear a fair, non-discriminatory portion of both the costs of locally distributing their traffic, and the burden of supporting disproportionately expensive local service.

Unfortunately, as noted above, no one knows what "fair" means in dollar terms. Carrier accounting has never been designed to reflect the actual costs of interconnection and related services for individual exchange areas. Pooling and averaging have been the rule. This section and section 254 are designed to resolve this absence of facts, and the Transitional Joint Board and the Commission are given three years to move to a new system.

It is clear that all long distance carriers must pay the same price for equivalent use of local facilities and services for competition to work fairly, and to ensure that local carriers are fully and properly reimbursed for distribution costs. If some local services are to be subsidized to meet important social policy goals these decisions must be made by the TJB or the Commission, not by a group of carriers. Important social policy goals served today by separation and settlements must be met by a system subject to public accountability.

Finally, access charges based solely on cost are critical to the long term survival of our integrated telephone networks, and of telephone services at reasonable and affordable rates. Access charges under cost (including the portion of joint and common costs properly allocatable to long distance users) will make continuation of universal service at reasonable and affordable rates impossible.

Without proper access charges, local rates will be increased in the short run. On the other hand, if access to traditional local service is priced significantly above cost, those users who have options (large and medium-sized corporations) will exercise those options and "go off the system" totally or partially, resulting in small businesses and residential customers who have no other choice bearing all the costs of local distribution plant. Moreover, bearing the burden of the fixed system costs, excessive access charges will stimulate the construction of uneconomic, duplicative local distribution facilities. For, whenever a user can lower his costs by avoiding paying access fees he will tend to do so, even if he consumes more resources that would be required by use of local switched facilities.

Under the competitive world of today these effects could be substantial. Furthermore, two factors make the shift from "fully connected" to "connected at one end" to "non-connected" an easy and smooth transition. These two factors are the existence of single-ended, dedicated connections and the modern computer.

At today's level of payments by traditional carriers, going from an Execunet-like service to a service with a dedicated access line would result in significant savings. Thus the user should be willing to pay several thousand dollars per year for an access line to MCI's or SBS's or any other carrier's intercity system because this could still be less than double-ended access charges if the latter are significantly in excess of cost. Access fees substantially above cost will thus drive larger business users off the local net quickly (at least for originating calls). However, once such a firm is connected to the alternative network it is an easy technological step to terminate calls over the connection as well as to originate them. Modern computer technology allows networks to adapt easily to the use of such connections, so that much large user to large user traffic could be off net.

But of course such migration is only possible for medium sized and larger businesses. The residential user's calling volume is too low to justify economically similar dedicated access lines to long distance networks. The long term result of such a migration would be to saddle small users with all the costs of the basic long distance system.

Again, the Committee is extremely concerned that a financial mechanism be established to ensure the continuation of universal telephone service at reasonable and affordable rates in those areas where free market economics will simply not do the job. These occur primarily in rural areas where geography and other factors significantly increase distribution costs and the cost of links to toll networks.

Purposes of Section 233

Section 233 has six major purposes:

1. It clearly separates the costs of interexchange carriers using local exchanges from contributions required by social policy goals, instead of the current confusing mix. It gives to government agencies—not carriers—the job of deciding what subsidies are necessary.
2. It gives the economy, and therefore the public in general, the benefit of economic efficiencies inherent in a cost-based approach.
3. It clearly identifies priority areas for subsidies from all long distance carriers—high local distribution costs and high costs of connecting rural local service to long distance networks—thus eliminating significant disparities in cost of telephone availability between urban and rural areas.
4. It provides an entitlement process for small carriers if they have high local distribution costs, eliminating red tape or adjudicatory proceedings.
5. It avoids "substantial or undue" rate increases which might otherwise result from a transition to a cost-based interconnection system.
6. It requires equal payment of access charges and equal contributions to subsidy pools by long distance carriers which receive equal interconnection and related services.

Equal treatment of connecting carriers

Section 233 reflects the strong policy established in section 216 of requiring equal treatment of all interexchange carriers by intraexchange carriers.

Section 233 clearly states the Committee's intention to draw a line between interexchange and intraexchange carrier activities, whether or not both are conducted by the same carrier or by an affiliated entity. This line is necessary to determine whether the interconnection requirements of section 216 have been met, and to prevent cross subsidies between local and local distance activities. To carry out this latter purpose, the bill provides that any service or facility provided by a local carrier to a long distance carrier must be done solely pursuant to the access charge mechanism and must be available to all other such carriers. This includes everything from maintenance and billing to switches and shared office space. The cross reference to section 254 requires an accounting division at this line.

While there is little conclusive national evidence, some studies have suggested that local loop activities have been subsidizing both equipment and long distance activities. Yet others argue just the opposite. Section 233 is designed to ensure equal treatment of all connecting carriers and this would be impossible if such cross subsidies occurred.

The section extends Commission authority over such subsidies in another area by barring the inclusion in access charges of any costs associated with deregulated activities, such as the data processing business of a local carrier. Other costs which should be excluded from access charges are those which do not directly relate to the provision of local service, such as providing consulting services to other telephone companies. State commissions should also be concerned with Cross subsidies flowing the other way. If accounting separation alone will not suffice to prevent these problems, the Commission and the state commissions clearly have the authority to require stronger separations between regulated and unregulated local activities, such as the legislation requires in the case of AT&T.

The Committee intends that the issue of equivalent and nondiscriminatory interconnection to any dominant carrier, other regulated carrier, or an intraexchange carrier be settled expeditiously.

H.R. 6121 explicitly links access fee schedule approval and nondiscriminatory, equivalent interconnection, requiring local carrier certification of nondiscrimination in interconnection and Commission review of the question before access charges can be approved.

Intraexchange and other carriers are expected to be in compliance with the requirements of the bill at the time the schedule of fees referred to in Section 233 takes effect. Absent such compliance, an interim schedule of fees may be ordered by the Commission.

The Committee intends that the interim schedule of fees promulgated by the Commission, should it fail to certify that the schedule of access fees submitted by the intraexchange carrier is in compliance with the requirements of Section 216(b)(3) and this section, is to be set at a level which

1. provides the strongest possible incentive and encouragement to the intraexchange carrier to provide full nondiscriminatory interconnection as expeditiously as practicable, and
2. ensures that the interexchange carrier pays an access fee that is no greater than the amount which accurately reflects the service it is receiving.

The Committee believes that the nondiscriminatory protections in Section 216(b)(3) and this section are crucial to the ability of interexchange carriers to compete in the market, and that affected carriers have an obligation to provide full equivalent interconnection, commensurate with that enjoyed by any dominant carrier's interexchange services, to all other interexchange carriers.

The access charge system established by H.R. 6121 advances this policy in one other way. Direct charges and contributions to the third account of the NTP vary by the quality of the physical interconnection and the value of services requested by and provided to an interexchange carrier. Thus an economic incentive for compliance is created.

Components of the access charge

Every intraexchange carrier is required to develop a set of charges for the use of its basic local switched facilities and any supporting services by long distance carriers. These charges must be submitted for each local exchange area to the Commission or state commission.

The Commission is given full authority over proposed access charges. It can approve, disapprove, or modify them. It can impose interim charges while it determines what the exact level should be. In particular, it is directed to impose access charges designed to speed compliance for carriers which are not receiving equivalent, nondiscriminatory interconnection in order to provide a strong monetary

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incentive for compliance with section 216. To further reduce the regulatory burden on small carriers, H.R. 6121 provides that their access charges shall be subject only to state commission approval (following federal guidelines), unless the Commission determines that a state is not complying with the law. The commission, in establishing the appropriate costing methodology, in the case of small carriers, shall use the least burdensome accounting methodology possible, including valid estimating methods where appropriate.

All long distance carriers, the traffic of which use local switched facilities, must pay these access charges which will consist of three parts:

1. *Direct costs of interconnection.*—All costs which are entirely allocable to long distance or related to the volume of long distance calls are received here. Depending on the Commission's choice of the proper points of interconnection, this could include the costs of a Class 4 toll office, the Class 4 to Class 5 link, and portions of the Class 5 office. It would also include any and all services provided to interexchange carriers by the intraexchange carrier such as maintenance, billing, operators, administration, shared buildings, etc. Carriers would pay these costs according to the quality of interconnection and the level of services they requested and received, the requirement being non-discriminatory equivalent treatment for all interexchange carriers, whether or not they are affiliated with an interexchange carrier. Thus for example, some of the costs of operators providing long distance directory assistance should be charged to interconnected carriers or directly to the users of such directory assistance, the latter being far preferable because a fair charge to carriers would be impossible to determine.

2. *Share of intraexchange costs.*—As is only fair, each interexchange carrier must assume a portion of the local telephone company's costs for local switched service which are not directly allocable to long distance but are used by it. The costs of jointly used plant and services are to be divided between long distance and local on the basis of a formula to be determined by the TJB and then the Commission.

The bill does not choose any specific cost allocation system. Rather, the Committee intends that a new, fresh review of the entire issue of allocation of such costs be undertaken. The Committee rejects the Commission's tentative view as expressed in its Notice of April 16, 1980, that access charges can simply be grafted on to the existing Separations and Settlements process. After much debate the Committee specifically decided not to adopt in legislation any specific formula such as "marginal cost," "relative use," or the Ozark formula in use today. The Committee felt that such a complex issue should be left to the expert agency, particularly in the first instance, one with state representation. It did agree, however, that this portion of the access charge should not include any subsidies, any amounts over cost. H.R. 6121 provides that any subsidy must be provided through the National Telecommunications Pool. To the extent such subsidies exist today, but are not related to high local distribution costs (NTP account 1), or high toll connecting link costs (NTP account 2), they must be phased out during an appropriate transition designed to avoid significant or undue rate increases.

The bill also reflects the Committee's judgment that, exclusive of increases in direct costs (part one of the access charge) or in the relative usage of local switched facilities by local distance traffic, total payments by long distance carriers to local carriers either through the NTP or in this section of the access charge shall not exceed the actual amount being transferred as of June 1, 1980. Roughly, this means the Committee capped the difference between SPF (subscriber plant factor) and SLU (subscriber line usage) at the dollar level existing on June 1, 1980. Increased costs of facilities allocated to long distance on the basis of relative use and increased relative usage are not subject to this cap, and will be reflected in access charges.

3. *Contributions to local services.*—There are many areas of the country, particularly in rural regions, where the costs of local service and the costs of connecting local service to long distance service are or may be significantly higher than the national average. Therefore, the bill provides that all long distance carriers (and therefore their customers) which use local switched service will contribute to the support of high cost local and long distance connecting services through surcharges or access charges. These contributions are discussed below.

Transition period

Section 232(c)(3) gives the Commission up to three years to implement a system of access charges. The Committee realizes that the Commission has been given significant detailed responsibilities by this section, with a relatively tight schedule for compliance. The Committee will exert its influence with the House Appropriations Committee to ensure that the Commission has sufficient resources to accomplish these responsibilities. At the same time, the Commission can use a flexible approach to approval of access charges during the first years of the new system. National or regional access charges are clearly barred by the bill, but a baseline system similar to that used by the Internal Revenue Service to determine which taxpayers to audit would make sense until carriers and the Commission have adjusted to the new system.

The three-year period also gives the TJB time to determine the proper allocation formula for joint and common local costs, and the amounts necessary for each of the three NTP accounts. During this period, interexchange carriers will continue to pay for access according to existing tariffs and contracts (such as the present FX arrangements and ENFIA). The Commission, however, is given full authority to modify these tariffs or contracts if the public interest so requires.

The Committee sees no reason to cause abrupt changes in charges to any group of customers. Therefore, H.R. 6121 phases in payments by carriers or services, such as the new competing carriers, over a period of three years after the level of access charges is set. Established carrier services such as Foreign Exchange (FX), which now pay less than ENFIA, are treated the same way.

Just as AT&T has a legitimate need to phase in various changes in its corporate organization to cope with the requirements of the Act, the customers of services like FX and of the new competing carriers need a phased process to deal with what may be increased access fees. At the end of six years from the date of enactment, all interexchange carriers who receive non-discriminatory, equivalent interconnection will bear a proportional share of NTP subsidies.

The National Telecommunications Pool

To ensure that universal telephone service is available to all Americans at reasonable and affordable rates, the Committee voted to establish a National Telecommunications Pool (NTP) to provide targeted subsidies. The Committee's intent is to separate the cost of interconnection (paid through the access charge) from subsidies, and to give clear control of subsidy decisions to the government where they belong, instead of to carriers, as effectively exists today. H.R. 6121 clearly identifies the purposes and recipients of subsidies. The Pool is made up of three accounts which are contributed to by all long distance carriers which use local switched service.

1. EXCESSIVE LOCAL DISTRIBUTION COSTS ACCOUNT (NTP ACCOUNT 1)

One major area of cost differentials between areas of the country is the higher costs of local distribution in rural areas, particularly for those small carriers which do not have a large revenue base to support technological improvements. By rural areas the Committee generally means those areas in the United States or its territories which are classified as rural by the Bureau of the Census. The bill provides that if local distribution costs of a carrier with less than 50,000 main stations exceed 110 percent of the national average of such costs per main station, these carriers will be entitled to a subsidy from the NTP for the amount which exceeds 110 percent, simply by certifying this fact to the TJB or later the Commission. A cost standard was used because rates and services vary so widely that a national average rate would be impossible to determine. Costs of local distribution plant and related activities, on the other hand, have to be developed for the access charge anyway, so division by main stations is a relatively simple process.

Large carriers are not included in the entitlement provision of this account because (1) entitlement programs should be as limited as possible because of the potential for abuse; (2) larger carriers have the staff resources to prove their costs and need; (3) they have the resources to incorporate efficiencies in local distribution functions more readily; and (4) they have access to the third NTP account for costs which would cause significant or undue rate increases. In addition, the bill explicitly gives the TJB and then the Commission the authority to extend the coverage of the first NTP account to other high cost carriers. For example, a group that might be given consideration by the TJB is those carriers which are part of holding companies larger than 50,000 total main stations, but which are eligible for low cost loans from the Rural Electrification Administration because they serve high cost rural areas. The TJB and the Commission are given great latitude regarding to larger carriers if they are included in this account, so that, for example, they could use a different threshold percentage than 110 percent, or could grant payments of less than the full amount over the threshold it picked in order to add a greater efficiency incentive (e.g., 75 percent of all costs over 150 percent of the national average). A surcharge to fund this account shall be part of such access charge.

2. EXCESSIVE COST OF TOLL CONNECTING LINKS ACCOUNT (NTP ACCOUNT 2)

Another area of asserted cost differentials is the link in rural or remote areas between local service and the toll networks. This generally involves the link between the Class 4 to Class 5 offices. There is little cost data on this issue. Before this account could be used, the TJB and the Commission must be satisfied that significant cost differentials do in fact exist, and that due to that fact rates are being de-average.

The toll NTP account provides that where long distance rates would exceed 110 percent of the national average because of these cost differences, the NTP would pick up the difference. The Committee is especially concerned about the continuing need to defray the costs of providing telephone service in Alaska and toll service to and from Alaska and Hawaii. The Committee intends that Account 2 be used to deal with those excessive costs in order to ensure that telephone service available in Alaska and Hawaii is comparable to that available in the continguous 48 states.

A surcharge to fund this account shall be part of such access charge.

A possible problem would occur if basic interexchange carriers were to file a de-averaged Toll Tariff but there were no funds available in the second account of the NTP. The Committee expects that the Commission would reject such a tariff if there were no funds available in Account 2 of the NTP.

3. SUBSTANTIAL OR UNDUE RATE INCREASES ACCOUNT (NTP ACCOUNT 3)

Without this account there could be some undue rate increases in some areas in the transition from the present system to one which is cost based and in removing terminal equipment from rate base. This account eases the transition by providing for payments to all intraexchange carriers where necessary to avoid "substantial or undue increases in charges for basic intraexchange service" which are caused by this transition and are beyond the control of a carrier. The Committee is not interested in granting subsidies for inefficiency.

This account will disappear as the transition to a cost system is completed. No time limit is set on this account but that decision should be made by the TJB based on a continued need for this account to prevent substantial or undue rate increases but its size is limited by the cap imposed on the allocation to long distance traffic of joint and common costs not related to relative use.

After setting the total amount needed for this account, the TJB shall assess contributions from long distance carriers in proportion to the ratio of their total access charge payments to the total of all access charge payments. Contributions to this account are not part of the access charge.

4. POST AUDIT REQUIREMENTS

The Committee designed the entitlement provisions of the NTP's first account to avoid the imposition of burdensome delays on small carriers. It did not intend, however, that NTP funds would be provided to these carriers without any check or review. The TJB and later the Commission have the explicit duty to conduct audits of these and any other carriers receiving NTP funds to ensure that the requirements of the statute are met. Refunds of entitlements payments may be required under two circumstances: (1) cost data submitted is determined to be incorrect; or (2) NTP payments are used for purposes other than keeping local rates reasonable and affordable, i.e., they are not passed along to ratepayers.

The TJB may also refuse payments from the NTP, prospectively, if it determines that such payments remove incentives for efficient service. In other words, the Committee has no intention of subsidizing non-cost-effective facilities. For example, the TJB could determine that after a certain time mechanical switching facilities or cable toll connecting links should not receive a full subsidy because digital switching or satellite connection is far more economical and efficient. Of course, the TJB must also take into account the national security needs for survivable facilities in assessing such efficiency.

NTP payments by partially connected carriers

Interexchange telecommunications are currently distributed from the interexchange carrier to subscribers by one of several distinct methods. The vast majority of such services (e.g., MTS/WATS, FX, MTS-like services such as Execunet) use the basic switched intraexchange network at least at one end—the same network that provides intraexchange telephone service. Most of the remainder of interexchange services (e.g., point-to-point private line services) reach the subscriber over dedicated local facilities. Finally, some interexchange services are currently distributed directly to the subscriber without using any intraexchange carrier facilities at all (e.g., directly to a rooftop satellite antenna, by radio, by cable TV).

The H.R. 6121 access charge system is cost-based and applies to all services which use any intraexchange carrier facilities for local distribution. NTP surcharges will be applied only to interexchange services which use intraexchange basic switched services and facilities. Services such as FX which connect with intraexchange service only at one end (the "open" end), will pay a surcharge only at that end. In addition to directly connected services (e.g., MTS/WATS, MTS-like services such as Execunet), indirectly connected services (e.g., private line services which terminate on a PBX that circuit switches incoming interexchange traffic into a basic switched intraexchange service for further distribution) will pay a surcharge proportional to their actual usage of the switched local exchange. Such usage will be difficult to measure, so access charges for such traffic may have to be based on studies and averages.

The surcharge will not apply to point-to-point private lines services which use dedicated non-switched local access facilities and are not indirectly connected to intraexchange telephone service. Such carriers will pay cost-based charges for these dedicated facilities which, under part one of the access charge, are fully allocable to their activities. Totally non-connected communications services, such as American Satellite Company's SDX service, will pay neither access fees nor surcharges. But, if a service were interconnected to a PBX and connects to the local switched network then the access charge would apply to the connecting traffic and payment would be the responsibility of the customer. The Commission has the necessary powers to measure traffic, sample PBX traffic, require metering software on PBX's, or otherwise assure that the volume of traffic needed to calculate these fees will be properly estimated or measured.

Determination of Effective Competition

Section 220 contains the definition of the term "effective competition." This term has a bearing on the implementation of sections 214 and 215.

Under section 214(b), the Commission may assert its regulatory authority when it determines that effective competition does not or will not exist in a particular market or submarket or that regulation is necessary to serve the public convenience and necessity. Under section 215(a)(2)(B), carriers seeking deregulation must demonstrate to the Commission that effective competition exists in a market or submarket.

Thus, proper interpretation of the standard established in section 220 is critically important to the implementation of the legislation. The Commission is instructed to review a series of factors. The primary standard is whether there are reasonable alternatives available in a particular market or submarket which are the same or substantially similar to the service in question. In determining whether services are reasonable alternatives, the Commission is required to consider the extent to which these services are provided by entities which are not affiliated with one another. For example, the Commission could not deregulate a private line service offered by AT&T if the only alternative private line service in a given market was being provided by a subsidiary of AT&T.

The Commission is required to consider a number of factors, including the number of alternative services, the size of the entities providing those services, the extent to which those services are available, and the ability of the competing service providers to make those services available at comparable rates, terms and conditions.

The latter element does not mean that comparable rates must actually be offered by competing carriers in order for there to be a determination that effective competition exists. The marketplace will reflect variations in rates based on differences in costs, system design, and management. It is the ability of a competing carrier to offer comparable rates which is important here.

The Committee intends that the Commission also take into account other indicators of the extent of competition, primarily the market share of each of the competing entities and the availability of comparable private systems.

Reciprocity

In section 6 of the bill, the Committee recognizes that the United States must be sensitive to the implications for the international telecommunications market place of its domestic decisions. While no single agency of government has exclusive power to decide the fate of American telecommunications and data processing in the world market, the Commission is an important factor. Its actions provide a critical element in deciding whether American companies will be at a disadvantage in foreign markets. At the moment, this nation has the most mature and sophisticated telecommunications market in the world; entry to the U.S. market will, for a considerable time to come, be essential for the rapid growth of foreign enterprises in emerging information and telecommunications services. Most foreign governments are restricting the entry of American telecommunications and data processing services into their domestic markets.

Under sections 203, 204 and 205 of the current Communications Act, all carriers are required to file tariffs with the Commission setting out their charges for services and the terms, practices, and conditions under which those services will be offered. The Commission may then review these tariffs to determine if they are in the public interest, and if the services offered under them are in the public interest. In Section 214 of the 1934 Act, the Commission has similar powers of review for the establishment of facilities.

Under these provisions of existing law, it has been strongly argued that the Commission can consider questions of reciprocity in determining whether to permit a foreign carrier to enter the U.S. market or to establish facilities. Both NTIA and the Commission testified this spring before the Government Information and Individual Rights Subcommittee of the Committee on Government Operations that existing provisions of the Communication Act of 1934 would permit the Commission to consider, when appropriate, questions of reciprocity. Imposing reciprocity would involve permitting foreign enterprises entry into the domestic United States market upon terms which will provide fair and equitable treatment when compared to those imposed upon American enterprises in the home country of the foreign enterprise.

H.R. 6121 retains the Commission's power to consider reciprocity regarding the establishment of telecommunications facilities by foreign enterprises. Unfortunately, the ability of the Commission to consider reciprocity regarding the entry of foreign competitors services is substantially less tenable under the other provisions of H.R. 6121 than under current law. The regulatory scheme of the bill eliminates the requirements that telecommunications services be regulated and tariffed and, thus, effectively eliminates the ability of the Commission to consider the propriety of the entry of any foreign carrier or service into the domestic telecommunications market. With regard to most unregulated services the Commission, without Section 6 of the bill, would have no basis to consider the question of entry into the domestic market and of reciprocity.

A substantial need exists for the Commission's reciprocity authority. Indeed, the authority of the Commission may be the only legal tool that America has to point to in negotiations on telecommunications services. The Committee does not intend that these provisions be used for purposes not consistent with section 6 of the bill.

This provision on reciprocity guarantees that the new regulatory structure proposed in the bill will preserve the only effective tool the United States has to ensure the fair treatment of our businesses in world telecommunications markets.

ANTITRUST ISSUES

(a) Section 9—Impact on Antitrust Laws and Litigation

H.R. 6121 is not intended to limit or otherwise affect the applicability of the antitrust laws to AT&T or any other carrier or person. In fact, in an environment of expanded competition and deregulation, the Committee believes that vigorous enforcement of the antitrust laws is vital.

From the outset, H.R. 6121 (and its predecessors H.R. 3333 and H.R. 13015) sought to achieve neutrality with regard to impact on pending or future antitrust cases. Provisions are included which state that in enacting this legislation Congress is not taking a position regarding those cases. However, the Committee recognizes that restructuring of AT&T (the dominant carrier) is required to prevent the company from using revenues derived from its regulated communications activities to gain a competitive advantage in its unregulated communications ventures.

Section 9 of H.R. 6121 is designed to eliminate any impact on ongoing litigation. It has been rewritten twice based on language supplied by the Justice Department and by the Chairman of the Judiciary Committee. The bill explicitly states that it expresses no Congressional intent with respect to issues of liability or relief, including structural relief, in any pending antitrust case. It fully preserves the authority of the courts to determine liability and grant relief, including structural relief.

In testimony before the Subcommittee on Communications and in subsequent correspondence, the Justice Department has formally taken the position that the legislation would not adversely impact their suit. Henry Geller, the Assistant Secretary of Commerce and principal spokesman for the President on telecommunications policy, testified that passage of legislation would not prejudice the outcome of the case (May 1, 1979). Furthermore, the Administration's draft legislation, which was approved by the Justice Department, contained a statement of neutrality which was even less explicit than Section 9 of H.R. 6121.

The Committee, in reporting H.R. 6121, emphasizes that Congressional action to establish communications policy should not in any way be read to constrain the courts in antitrust questions. The Committee believes that H.R. 6121, as it is now written, preserves the rights of the legislative branch without intruding on the rights of the judiciary.

(b) Recognition of the Need for Limited Modifications of the 1956 Consent Decree

In 1956, AT&T entered into a Consent Decree settling the seven-year old antitrust prosecution which had sought judicial separation of AT&T and its wholly owned manufacturing subsidiary, Western Electric Co., Inc. The Decree has 17 sections. H.R. 6121 deals with only that portion of Section V of the Decree under which AT&T is enjoined from engaging in "any business other than the furnishing of common carrier communications services" (with certain exceptions). The bill provides that the Decree should not be read to bar AT&T

from participating in unregulated telecommunications markets or from offering products or services which the FCC finds to be incidental to telecommunications. The bill does not affect other substantive provisions of the decree such as the Patent section.

This modification is required by the Committee's decision to deregulate certain products or services which are currently regulated in whole or in part—primarily terminal equipment and data processing services. Failure to address the restrictions in the decree would have the effect of barring AT&T's continued activities in markets in which it is already participating, although under regulation. It should be noted that the Decree itself exempts "business or services incidental to the furnishing by AT&T of the common carrier services." Whatever intitial interpretations of this language may have been, the FCC has chosen to read this provision so broadly as to encompass "customer premises equipment" and "enhanced services" in an effort to achieve the same goal as the legislation. (See Final Order, Docket No. 20828, "Second Computer Inquiry.")

The convergence of communications and computer technology has created a major policy dilemma. The communications industry has developed within the pervasive regulatory framework of the Communications Act, while the computer and data processing industry has flourished in an unregulated environment. Certain products and services developed by AT&T have the attributes of data processing and compete directly with products and services offered by unregulated firms.

Since the Decree restricts AT&T's participation in unregulated markets, the FCC is faced with a difficult choice: (1) seek to expand regulation over data processing equipment and services, or (2) deny AT&T the right to offer the equipment or service. Given these choices, the FCC has consistently chosen the first option. For example, the staff of the FCC's Common Carrier Bureau argued that Bell's Dataspeed 40/4 terminal performed primarily data processing functions and could not be offered. The Commission, however, reversed the staff, permitting AT&T to offer Dataspeed 40/4 under tariff. The Dataspeed 40/4 is essentially similar to the IBM 3270 terminal which is available on an unregulated basis.

In its Second Computer Injuiry, the FCC asserted regulatory jurisdiction over all "enhanced" services ("any offering . . . which is more than a basic transmission service") and all customer premises equipment. The Committee is concerned that these decisions go in the wrong direction—expanding regulation—when it is clear that marketplace forces and an unregulated environment have led to unparalleled innovation, productivity and growth in the computer and data processing industries. However, the Committee also recognizes that these decisions have been compelled, in part, by the existence of the limitations in the Decree.

Modification of the Decree is necessitated by the Committee's decision to change the underlying law in order to eliminate FCC and state regulation of terminal equipment and data processing services and to deregulate certain telecommunications services in markets where effective competition is found. Moreover, the Committee believes it is unwise policy to allow AT&T to continue in these markets (or enter new ones) without strong protections against cross-subsidization. Regulation of AT&T in these markets is replaced with the structural safeguards and prohibitions on conduct contained in Sections 214, 218, 219, and 254.

The limitations in the Consent Decree were predicated upon the scheme of regulation based on the Communications Act which existed in 1956. A decision by Congress to make significant changes in law which underlies a judicial decree is not without precedent. See *Seese v. Bethlehem Steel Co.*, 169 F.2d 58 (4th Cir. 1948); *Battaglia v. General Motors Corp.*, 169 F.2d 254 (2d Cir. 1948), *cert. den.*, 335 U.S. 887 (1948); *Thomas v. Carnegie-Illinois Steel Corp.*, 174 F.2d 711 (3rd Cir. 1949). As Chief Justice Marshall stated, "if, subsequent to the judgment . . . a law intervenes and positively changes the rule which governs, the law must be obeyed." *United States v. Schooner Peggy*, 5 U.S. 103, 110 (1801). Upon enactment of H.R. 6121, AT&T would still be bound by the 1956 Consent Decree until such time as it petitions the U.S. District Court in New Jersey to modify or vacate that decree based on the changes in the underlying statute. At that point, the Court would conform its judgment to the statute.

FEDERAL/STATE REGULATION: THE TRANSITION

Regulation of communications common carriers has traditionally been carried out by both the Commission and by state regulatory bodies. Generally speaking, the Commission has regulated interstate services and state agencies have regulated intrastate services. Problems have arisen where the facility or equipment involved is used to provide both interstate and intrastate services. Disputes have resulted from conflicting policies and have centered on whether the position of the Commission or of a state agency should prevail. Perhaps the best example of this type of conflict was the controversy over whether customers should have the right to use their own terminal equipment or be forced to use only equipment supplied by a local telephone company. Despite a Commission decision to permit use of customer-provided terminal equipment, many states accepted telephone company tariffs which prohibited "foreign attachments". In most of these disputes, the courts have ruled that federal policy should prevail.

The other type of jurisdictional problem relates to the division of costs of jointly used facilities and equipment between federal and state jurisdictions for purposes of rate-making. This process has traditionally been carried out by a federal-state joint board pursuant to Section 410(c) of the Communications Act. Recommendations of the joint board are reviewed by the Commission. The cost separations procedures developed in this fashion are then binding on the state agencies and on carriers.

There are a number of instances where H.R. 6121 makes changes in the traditional jurisdictional boundaries and in the treatment of facilities and equipment which impact on cost separations. For example, most intrastate toll jurisdiction is moved to Federal jurisdiction, recognizing that the technical boundaries which should govern regulation (exchange/interexchange) have little relationship to state boundaries. The Committee is concerned that the changes be handled in a manner which recognizes the prerogatives of federal and state regulators and which minimizes the impact on both carriers and consumers. It is for these reasons that the Transitional Joint Board is established.

The Transitional Joint Board (or TJB) is composed of 3 commissioners of the Commission and 2 state commissioners (nominated by the states and approved by the Commission). Constituted in this fashion, the TJB will reflect the needs and interests of both federal and state regulators. However, since the TJB is vested with certain interim authority which has traditionally been exercised by the Commission or which will ultimately reside with the Commission, the Committee felt it was appropriate to provide that a majority of the members of the TJB be FCC commissioners and that state representatives be approved by the Commission as is currently done under section 410 (a) of the Act. The Committee contemplates that the TJB will require a small full-time, professional staff and will draw on the existing staff and resources of the Commission and state agencies (or their representatives).

The TJB is charged with:

1. Overseeing the establishment of local exchange boundaries including the authority to make minor modifications in the rules governing the size of exchange areas;
2. Establishing rules to implement the deregulation of terminal equipment;
3. Establishing the National Telecommunications Pool and making certain that revenue assigned to the NTP are distributed properly by the carriers;
4. Making such changes in the separations and settlements procedures as may be needed to facilitate the transition to the use of intraexchange access fees;
5. Determining the percentage of non-traffic sensitive costs which should be recovered from interexchange services;
6. Advising the Commission on proper terms and conditions for equivalent access to local telephone company facilities; and
7. Phasing out the imputation of revenues from printed directory advertising to related carrier activities for rate-making purposes in those states where the practice now takes place.

Several of these functions deserve some additional comment.

Deregulation of Terminal Equipment

H.R. 6121 provides for the deregulation of terminal equipment. The Committee believes that deregulation in this area will create a more competitive marketplace and protect regulated ratepayers from bearing the cost of equipment competition. Because the costs of terminal equipment will no longer be "bundled" into the regulated rates charged for telephone service, telephone companies will be forced to compete on the same basis as the competitive suppliers. On the other hand, telephone companies will be able to react more effectively to price competition because they will no longer have to file new or amended tariffs before implementing price changes. The consumer will benefit from an unregulated environment in which prices will more accurately reflect the true costs associated with terminal equipment.

There are several problems associated with the transition from a regulated to an unregulated environment for terminal equipment. First, deregulation of terminal equipment means that equipment in place will have to be removed from the telephone companies' rate base. Unless this occurs gradually there could be an abrupt impact on revenue requirements and rates. The Committee expects the TJB to establish rules to govern the transition.

Second, because terminal equipment is included in the non-traffic sensitive costs of telephone companies, those companies are now entitled to toll settlements payments based in part on that equipment. Removing terminal equipment from the rate base will, therefore, create additional revenue requirements for telephone companies, assuming no change in the separation procedures. If existing equipment is withdrawn on a gradual basis, this impact can be significantly reduced, if not eliminated.

Third, the Committee is concerned that in deregulating terminal equipment, consumers not lose access to telephones. The Committee recognizes that while there are many competing suppliers (including traditional retail outlets), the extent of competition varies depending on the size of the community. However, the Committee expects that telephone companies will continue to sell or lease terminal equipment even if it can no longer be offered as part of a tariffed service. Where there is a likelihood that this will not occur, and where no alternative source is available, the TJB is required to ensure that regulated carriers make more telephones available. The Committee recognizes that the transition period may have to be longer in rural areas in order to protect the consumer. Where A.T. & T. operating companies transfer equipment to the full separated subsidiary, the Commission is given complete pricing control pursuant to section 219. These transfers, and the prices of sales of used equipment by operating companies directly to customers are important competitive issues which must be carefully supervised by regulatory authorities.

OVERSIGHT OF THE NATIONAL TELECOMMUNICATIONS POOL (NTP)

The TJB has the responsibility for determining the amount needed to fund the NTP. The Committee expects the TJB to establish a formula for determining the appropriate portion of the funds collected as intraexchange access fees to be used for the purpose of defraying carriers' costs as set out in section 233. Because the funds will be collected by local telephone companies, the TJB's role will be dedetermine interexchange carrier contributions to the NTP, and eligibility for NTP funds, and to order payment to eligible carriers. The TJB will not actually handle these revenues. Rather, the funds will be accounted for separately and will be held in trust by local carriers until disbursement is ordered.

Changes in Separations and Settlements Procedures

The existing process known as separations and settlements must be altered in order to effect the transition to intraexchange access fees. Although the current procedures are complex, they can be characterized rather simply. All telephone companies pool their costs associated with interstate long distance service (including appropriate portions of local plant). Long distance or toll revenues also are pooled and distributed so that each company recovers its costs, with the remainder distributed to carriers based on their proportionate share of the total costs.

Following implementation of the intraexchange access fee schedules, the separation of costs for purposes of federal and state regulation still will be necessary. However, pooling of costs will be subject to the limitations contained in Section 211(c) and to approval by the Commission. Since H.R. 6121 contemplates the continued desirability of filing a single tariff for long distance telephone service, some form of a toll settlements process also will continue supervised by the Commission, although the portion of the costs of intraexchange facilities and services to be borne by interexchange ratepayers will be recovered exclusively through the access fees. The bill also requires a shift to exchange-by-exchange costing for access fees.

The TJB should assist the Commission during the transition period in making changes in separations and settlements procedures which anticipate the implementation of access fees. For example local distribution costs for AT&T's foreign exchange (FX) service are treated today as if the FX user were a local ratepayer. Despite the fact that toll facilities are used, FX use is treated as a local phone call and its costs are subject to state jurisdiction for ratemaking purposes. Modifications will be needed in cost separations as the TJB shifts a portion of these costs to the federal jurisdiction.

Treatment of Directory Advertising Revenues

In some states, the revenues derived from the sale of advertising in yellow pages are imputed to the earnings of the local telephone company for rate-making purposes. H.R. 6121 draws a clear line between regulated and unregulated activities and prohibits revenues generated in regulated activities from being used to subsidize unregulated activities and *vice versa*. Thus the bill requires that terminal equipment be removed from regulated rate bases and shifted into unregulated activities or fully separated acts. As this dividing line is drawn by federal and state commissions through the use of both the accounting and structural safeguards contained in the bill, the Committee intends that revenues from directory advertising not be imputed to regulated carrier activities. In order to minimize the impact on carriers and consumers, the Committee has provided that this practice be phased out subject to a timetable established by the TJB which is consistent with the provision of local service and reasonable and affordable rates.

The role of the TJB in dealing with the capital recovery of existing plant is discussed in another section.

The Committee notes that all powers and duties assigned to the TJB will revert to the Commission after the six-year transition period established in the bill.

DEPRECIATION CHARGES

The purpose of Section 252 is to create a mechanism (through the use of the transitional joint board and later a Joint Board) which will establish the classes of property used by any dominant carrier or other regulated carrier and permit such carriers, for ratemaking purposes, to recover their invested capital (both present and future capital investments) in a manner consistent with the needs of our economy and with the methods of capital recovery available to others in the private sector.

The Commission and most State commissions presently establish the method by which a regulated carrier, for ratemaking purposes, recovers its invested capital through the use of depreciation schedules (primarily based on a straight line method of depreciation, and utilizing long lives). These schedules are unlikely to be the same as the depreciation schedules followed by the regulated carriers for tax or other purposes and do not permit a carrier to recover its capital over as short a period as is likely to be utilized by such carrier's competitors in the private sector.

The substantial changes made by this Act will result in subjecting the carriers to increased competition from the rest of the private sector. In light of this, it is essential that the methods by which a regulated carrier recovers its capital be substantially changed so that the regulated carriers remain viable and continue to be able to provide universal telephone service. The Committee believes that the carriers must be given the same opportunity to recover their capital as their competitors so as to assure that they will be able to replace their capital investments as technology and competition require.

Section 252 maps the road to full economic competition in telecommunications by treating separately two kinds of property: first, utility property already in service on the first of January following the date of enactment of this Act; and, second, all other property—new or not in service at that date. For the latter category of property, depreciation expense for ratemaking purposes will be selected by the carriers, from a menu of alternatives prepared by the regulators. Additionally, for "old" property, full recovery of the capital already prudently invested is provided by allowing, as depreciation expense for ratemaking purposes, such additional amounts as are necessary to recover all embedded capital by use of the remaining life method. Competition, technology and remaining economic life are to be taken into account in determining remaining life.

ACCOUNTING SYSTEMS AND PRACTICES

Section 254 requires the dominant carrier, as well as other regulated carriers whether or not dominant, to maintain a system of accounts to be established by the Commission. The legislation mandates that the Commission establish these accounting methods, techniques, and procedures within two years of the date of enactment of this legislation.

The system of accounts has two major elements. First, it requires that the accounting system ensure a proper allocation of all costs to and among various telecommunication services, facilities, and products, as well as to and among these same classes of services. This means, for instance, that the costs of regulated private line services must be identified, properly allocated to them, and must be clearly distinguished from the costs of, for instance, basic telecommunication services or central office equipment.

The second major element of this new accounting system is the complete separation of the costs of regulated activities and unregulated activities which include the costs incurred by a dominant carrier on behalf of a fully separated subsidiary and include costs incurred prior to the date of enactment.

An accounting system of this type is needed to enable the Commission to adequately and properly carry out its authority under this

Act. It also facilitates assurance that the costs of unregulated activities are not borne by the users of regulated services which is the objective of Sec. 201(c).

The Committee has examined various accounting proposals, including the ongoing efforts at the Commission, and has concluded on the basis of expert testimony before the Subcommittee on Communications and its own inquiry that the accounting system specified in this section can be implemented with reasonable dispatch and meet the goals of prevention of cross-subsidies. To ensure that no delay results in the implementation of this necessary tool, the Committee has mandated that this task must be accomplished within two years. The expert testimony before the Subcommittee on Communications indicated that the second element of this accounting system could be accomplished more quickly than this, however.

The Committee was concerned that this accounting system may not be necessary and appropriate, especially for small carriers in rural areas. Thus the legislation specifically provides the Commission with the authority to waive any of the accounting requirements for any carrier other than a dominant carrier. Full authority to enforce section 254 is provided in section 219(d).

NETWORK MANAGEMENT

Section 255(a) allows carriers to meet to do technical planning coordination, and standards development. It further gives the Commission the right to order such meetings among carriers when such meetings are required to provide appropriate networks or are required to meet the defense, security or preparedness needs of the Nation.

This section is carefully drawn to balance two competing needs. On the one hand, telecommunications firms must work closely together if their connected facilities are to function as a single set of integrated networks. The best example of this coordination process is the area code plan for direct distance dialing. All telephone carriers work together to standardize and coordinate the use of area codes and exchange prefixes so that each main telephone in the country has a unique telephone number.

But all carriers which interconnect, or which potentially could interconnect in an emergency, must plan for such interconnection. Such planning is not limited to the traditional carriers or the regulated carriers.

On the other hand, close coordination between firms which cooperate in some markets and compete in others can lead to anticompetitive abuses. Having permitted or required such meetings, section 255 guards against such abuse through three mechanisms:

(1) Network management meetings must be open to the Commission,

(2) Transcripts of the meetings must be kept and made public, and

(3) Section 255 cannot be construed to limit the antitrust laws or provide any defenses to them.

The disclosure of transcripts is generally required. However, when the Commission feels that such disclosure could adversely affect the security, defense or preparedness of the Nation, then the transcript should not be made public. The Committee expects that the Commission will keep in communication with Executive Order 12046 agencies and will coordinate security review of transcripts with those agencies.

Section 255 parallels a section of the Airline Deregulation Act of 1978 (49 USC 1382) with two notable exceptions. The Airline Deregulation Act section provided for anti-trust immunity in some circumstances. This section does not. And there were no provisions comparable to the defense, security, and preparedness provisions of this section.

NATIONAL DEFENSE AND EMERGENCY PREPAREDNESS

Communications services play an essential role in national defense and security and emergency preparedness of our Nation. Communications are required to gather intelligence, conduct diplomacy, command and control military forces, provide continuity of essential functions of government and to reconstitute the political, economic, and social structure of the Nation or of regions of the Nation during natural disasters or other emergencies. The transition from the current regulatory scheme and market structure to the new ones created by this Act and by changing technology requires special concern for the essential issues of defense, security, and preparedness. While Section 280 expressly addresses National Defense and Emergency Preparedness, these concerns are woven throughout the fabric of the Act.

Section 201(a)(1) gives promotion of the national defense and security and the emergency preparedness of the Nation as one of the common purposes of Title 2 of the Communications Act.

The authorities of the Commission listed in Section 212 include a very broad authority to establish standards and to take other appropriate action to promote the defense, security, and preparedness goals. Such other appropriate action would include calling network management meetings of the carriers, requiring carriers, as a condition of their radio licenses, to meet specific technical standards, and promulgation of technical standards. For example, Section 211(f) would prohibit the Commission from including a provision in a radio license limiting the range of services a carrier could provide. But 211(f) does not prohibit the Commission from requiring that a carrier's microwave system be compatible with technical standards which would aid appropriate and necessary interconnectability or restoration. The Committee does not mean to limit the Commission by the listing of potential actions. Rather, the Commission must judge whether any action to further defense, security, and preparedness is appropriate to the conditions existing at the time the action is taken.

Under Section 255 the Commission can require carriers to meet to plan facilities and procedures or take other action to meet the defense, security, and preparedness needs of the Nation. It is important and valuable to the Nation that carrier networks be interconnected (or capable of interconnection) and capable of interoperation in emergencies at breakout points outside of likely target areas. Section 255 enables the Commission to ensure that the facilities and plans for such interoperability are available and to ensure survivability of a portion of the total national telecommunications capability. It allows creation of the management capability needed for restoration and reconstitution after an emergency.

Section 280 allows the President to require service from carriers when the market cannot provide such services. This section parallels, in large part, the comparable provisions of the Defense Production Act as amended. (50 USC App. § 2071).

COMMITTEE HEARINGS

The Subcommittee on Communications held hearings on April 24, 25, and 26; May 1, 2, 3, 4, and 8, 1979, on the domestic common carrier telecommunications provisions of H.R. 3333, the broader communications bill which preceded H.R. 6121. Topics of the hearings included international and domestic telecommunications facilities and services, terminal equipment supply, interexchange regulation and services, local exchange regulation and services, and structural changes and other implications of the legislation for the Bell System.

The Subcommittee heard testimony from the following witnesses:

On April 24, 1979, the Subcommittee heard testimony from Richard B. Nichols, Vice President, American Telephone and Telegraph Company; George Knapp, Vice President, International Telephone and Telegraph; Dr. Joseph V. Charyk, President, Communications Satellite Corporation; Robert R. Bruce, General Counsel, Federal Communications Commission; Veronica M. Ahern, Director, Office of International Affairs, National Telecommunications and Information Administration; and Eugene F. Murphy, President, RCA Global Communications, Inc.

On April 25, 1979, the Subcommittee heard testimony from Richard B. Nichols, Vice President, American Telephone and Telegraph Company; David Lubetzky, President and Chief Executive Officer, TRT Telecommunications Corporation; Dr. Joseph V. Charyk, President, Communications Satellite Corporation; Richard C. Hostetler, Vice President and General Counsel, Western Union Corporation; Stanford B. Weinstein, Counsel for Regulatory Affairs, Graphnet Systems, Inc.; The Honorable Cecil Heftel, (on behalf of the State of Hawaii); Edward A. Gallagher, President, Western Union International; Donald M. Kuyper, President, Hawaiian Telephone Company; and Richard Brandt, President, Trans-Lux Corporation.

On April 26, 1979, the Subcommittee heard testimony from Neil A. Swift, Director of Communications Division, New York State Public Service Commission; Larry F. Darby, Chief, Common Carrier Bureau, Federal Communications Commission; Leland Schmidt, Assistant Vice President for Rates and Tariffs, General Telephone and Electronics Corporation; Robert McClelland, (on behalf of OPASTCO), Executive Vice President, Missouri Telephone Company; Alfred E. Franks, Director, Products and Services Management, American Telephone and Telegraph Company; Charles P. Johnson, (on behalf of IDCMA), President, General DataComm Industries, Inc.; Captain James Lovell (on behalf of North American Telephone Association), President, Fisk Communications Corporation; Louis Neumann, Staff Attorney, Tandy Corporation; Charles L. Brown, Chairman of the

Board, American Telephone and Telegraph Company; James Sichter, (On Behalf of the United States Independent Telephone Association), United Telecommunications, Inc.; David Saks, Director, Organization for Use of the Telephone, Inc.; John F. Morgan, TIU National Legislative Committee, Telecommunications International Union; and Philip Onstad, Manager, Telecommunications Policies and Data Services, Control Data Corporation.

On May 1, 1979, the Subcommittee heard testimony from The Honorable Juanita Kreps, Secretary, Department of Commerce; The Honorable Henry Geller, Assistant Secretary for Communications, National Telecommunications and Information Administration; C. Gus Grant, President, Southern Pacific Communications Company; William G. McGowan, Chairman of the Board and Chief Executive Officer, MCI Communications Corporation; Paul H. Henson, Chairman, United Telecommunications, Inc.; James E. Olson, Vice Chairman of the Board, American Telephone and Telegraph Company; Theodore F. Brophy, Chairman of the Board, General Telephone and Electronics Corporation; James C. Henderson, President, Rochester Telephone Corporation; and Robert P. Reuss, Chairman of the Board and Chief Executive Officer, Central Telephone and Utilities Corporation.

On May 2, 1979, the Subcommittee heard testimony from Charles Firestone, Director, Communications Law Program, UCLA Law School; Robert E. Bennis, (on behalf of the International Communications Association), Director of Telecommunications, Westinghouse Electric Corporation; Charles H. Pellard, International President, International Brotherhood of Electrical Workers; Charles H. Meehan, Attorney for Utilities Telecommunications Council, Keller and Heckman Law Offices; Howard Symons, Staff Attorney, Congress Watch; John C. Legates, Director, Program on Information, Resources and Policy, Harvard University; Emanuel Fthenakis, President, American Satellite Corporation; P. N. Whittaker, President, Satellite Business Systems; and Herbert N. Jasper, Executive Vice President, Ad Hoc Committee for Competitive Telecommunications.

On May 3, 1979, the Subcommittee heard testimony from Weldon W. Case, President, Mid-Continent Telephone Corporation; Evan Copsey, President, Fidelity Telephone Company; Dale Hatfield, Associate Administrator for the Office of Policy Analysis and Development, National Telecommunications and Information Administration; Edward P. Larkin, Chairman, Committee on Communications, National Association of Regulatory Utility Commissioners; A. Harold Petersen, National REA Telephone Association; David Fullarton, Executive Vice President, National Telephone Cooperative Association; Reuben L. Johnson, Director of Legislative Services, National Farmers Union; Charles R. Jones, Assistant Vice President, Separations and Division of Revenue, American Telephone and Telegraph Company; Earle K. Moore, Counsel to the Office of Communication, United Church of Christ; Amos B. Hostetter, Executive Vice President, Continental Cablevision; LeRoy T. Carlson, President, Telephone and Data Systems, Inc.; Steve Effros, Executive Director, Community Antenna Television Association; and Paul Brewer, (on behalf of United Telephone Company of Monroe, Wisconsin), Paul Brewer Associates.

On May 4, 1979, the Subcommittee heard testimony from Paul Likins, Vice President for Business Planning, Xerox Corporation; George Perrin, President, Telocator Network of America; David Fullarton, Executive Vice President, National Telephone Cooperative Association; Gustave M. Hauser, Chairman, Warner Cable Corporation; Allan J. Arlow, Vice President—Washington Office, Central Telephone and Utilities Corporation; Charles A. Zielinski, Chairman, New York State Public Service Commission; The Honorable Terry Miller, Lt. Governor, State of Alaska; Charles Wohlstetter, Chairman of the Board, Continental Telephone Corporation; William J. Bresnan, President, Teleprompter Cable TV; Lyle Abbott, Assistant Vice President, General Telephone and Electronics Corporation; Louis B. Knecht, Secretary-Treasurer, Communications Workers of America; William B. Strange, Vice President, Sammons Communications, Inc.; Richard A. Forsling, Chairman and President, Cablecomm-General, Inc.; Pluria Marshall, National Black Media Coalition, William Koch, Treasurer, National Burglar & Fire Alarm Association, Inc.; Richard W. Loftus, President, AM Video Corporation; and David Hoke, NFLCP Advocacy Committee, National Federation of Local Cable Programmers.

On May 8, 1979, the Subcommittee heard testimony from Charles R. Jones, Assistant Vice President of Separations and Division of Revenue, American Telephone and Telegraph Company; James E. Olson, Vice Chairman of the Board, American Telephone and Telegraph Company; John Preston, Associate General Counsel, American Telephone and Telegraph Company; Ed Goldstein, Assistant Financial Officer, American Telephone and Telegraph Company; Ian Ross, President, Bell Labs; Maurice Tannenbaum, President, New Jersey Bell; Robert R. Maxfield, Vice President and General Manager, Telecommunications Division, Rolm Corporation (accompanied by) Philip S. Nyborg, Vice President and General Counsel, Computer & Communications Industry Association; Clarence W. Spangle, President, Honeywell Information Systems, Inc. (on behalf of Computer and Business Equipment Manufacturers Association); Wallace C. Doud, Vice President, Commercial and Industry Relations, International Business Machines Corporation; Andrew F. Inglis, President, RCA American Communications, Inc.; Stephen H. Beach, Member, ADAPSO Board of Directors; Edwin B. Spievack, General Counsel for the North American Telephone Association; and George Knapp, Vice President, International Telephone and Telegraph;

In addition to the hearings, the Subcommittee on Communications also held a series of 3 public briefing sessions in November 1979. On November 1, 1979, the Subcommittee heard from Alfred E. Kahn, Chairman of the Council on Wage and Price Stability, who was assisted in his presentation by Dale Hatfield, Associate Administrator of the National Telecommunications and Information Administration of the Department of Commerce.

On November 7, 1979, the Subcommittee members were briefed by consultant Walter Hinchman, former Chief of the Federal Communications Commission Common Carrier Bureau. Philip L. Verveer, current Chief of the Common Carrier Bureau also took part in the briefing.

On November 8, 1979, Henry Geller, Administrator of the National Telecommunications and Information Administration briefed the Subcommittee on the agency's legislative recommendations. Philip L. Verveer again participated in the briefing session.

Congressional study and action

November 1975—Fundamental Changes Needed to Achieve Effective Regulation of Communications Common Carriers. Blue book published by Communications Subcommittee.

November 1975—Domestic Common Carrier Regulation. Five-day round of Communications Subcommittee hearings on H. R. 7047, a bill to amend common carrier tariff proceedings. (Bill enacted August 1976)

March 1976—Consumer Communications Reform Act introduced.

April 26, 1976—"Agenda for Oversight" published—A report by the Subcommittee staff on domestic common carrier regulation.

September 28–30, 1976—Subcommittee hearings on Competition in the Telecommunications Industry.

May 1977—"Domestic Communications Common Carrier Policy" published—An options paper by the Subcommittee staff.

May–December 1977—Roundtable discussions of options papers.

July–August 1978—Hearings on common carrier sections of H. R. 13015 in Boston, Denver, New Orleans, Baltimore, Washington, and other locations.

COMMITTEE ACTION

The Subcommittee on Communications met in open markup session on January 23, 24, and 29, 1980, to consider H. R. 6121 and ordered the bill reported with an amendment in the nature of a substitute and amendments, by a voice vote while a majority of the Subcommittee members were present.

The Subcommittee on Communications met again on June 12, 17, and 18, 1980, to reconsider H.R. 6121 and ordered the bill reported, with members were present.

The Committee met in open markup session on July 2, 23, 29, 30, and 31, 1980, to consider H. R. 6121 and ordered the bill reported, with amendments, by a recorded vote (34–7) while a majority of the Committee were present. Notice was given in accordance with Rule 9 of the Rules for the Committee, for the filing of supplemental, minority, or additional views to this report.

SENATE ACTION

The Senate has held no hearings on H. R. 6121 to date but the Committee on Commerce, Science, and Transportation has held some hearings on domestic common carrier issues this Congress.

SECTION-BY-SECTION

Section 201—Declaration of Purposes

This section specifies the purposes of the Act. The more important purposes are:

1. To assure that all the people of the nation have available at reasonable and affordable rates domestic telecommunications services.

2. To rely on competition and the private sector rather than government regulation to determine the availability, quality and cost of telecommunications services.

3. To assure that residential customers and persons residing in rural areas have telecommunications services at reasonable and affordable rates.

4. To foster a competitive environment.

5. To assure that the costs of the competitive activities of regulated carriers are not borne by the users of noncompetitive services.

Section 202—Definitions

Some of the significant definitions are:

1. *Affiliated Organization.*—This refers to any company or business organization affiliated with a carrier or subsidiary or entity of a carrier other than a fully separated subsidiary or an entity providing interexchange or intraexchange telecommunications service.

2. *Basic Telecommunications Service.*—This means universally available long distance voice telephone service and includes what was previously interstate long distance and intrastate long distance service. The latter was subject to state jurisdiction but is now under federal jurisdiction. This definition is not meant to include the various private line services offered by the specialized carriers such as Execunet and Sprint. The term also includes the intraexchange or local elements of the basic service.

3. *Dominant Carrier.*—The term applies to any interexchange carrier which the Commission classifies as a dominant carrier under the provisions of Section 213(a). The term includes any person who owns or controls a dominant carrier and any subsidiary (other than a fully separated subsidiary) to the extent that the subsidiary provides telecommunications service.

4. *Fully Separated Subsidiary.*—This means the subsidiary which the dominant carrier is required to establish in order to engage in any unregulated activity.

5. *Interconnection.*—This means any connection between a carrier and a customer's equipment or facilities, or between two or more carriers.

6. *Interexchange carriers.*—This refers to any carrier which provides interexchange telecommunications service to the public.

7. *Interexchange telecommunications service.*—This is any telecommunications service provided by a carrier between local exchange areas. All such services are within the jurisdiction of the Commission.

8. *International carrier.*—This means any carrier which is engaged solely in providing telecommunications service to foreign nations or to any carrier to the extent that the carrier provides such service.

9. *Intraexchange carrier.*—This is any carrier which provides intraexchange telecommunications service to the public.

10. *Intraexchange telecommunications service.*—This is any service provided by a carrier between points within a single local exchange area.

11. *Local exchange area.*—This refers to the geographical service area designated by a State commission or by the transitional joint board.

12. *National Telecommunications Pool.*—This is the pool established under Section 333(d)(1) to help defray certain costs of carriers providing basic telecommunications service.

13. *Private Telecommunications System.*—This means the network used and established by someone other than a carrier. This would include, for instance, the private telephone network of a company used for its own communications needs and not available to the public. The definition also includes central station alarm systems.

14. *Regulated Carrier.*—A regulated carrier is: (a) any intraexchange carrier which is providing basic telecommunications service; (b) any interexchange carrier which the Commission regulates with regard to the provision of basic telecommunications service, the provision of any service in association with the dominant carrier, the provision of any service regulated on the date of enactment until deregulated under Sec. 215, and the provision of any service when the Commission finds that effective competition no longer exists; and (c) any international carrier.

15. *Service, facility, or product incidental to telecommunications.*—This term includes data processing and information services (other than mass media services), data processing equipment, computer software, and terminal equipment.

16. *Standard Metropolitan Statistical Area (SMSA).*—This refers to the area in and around a city of 50,000 inhabitants or more, or defined by the Secretary of Commerce.

17. *Telecommunications Service.*—This means any service which provides for the transmission or retransmission of telecommunications. The term does not include the provision of terminal equipment.

18. *Transitional Joint Board.*—This refers to the board of federal and state regulators established under Section 231(a).

PART A—REGULATORY AUTHORITY OF THE FCC

Section 211—Scope of Regulatory Authority

1. *Federal Jurisdiction.*—Section 211 gives the Commission jurisdiction over: (1) interexchange services and facilities; (2) intraexchange facilities used by interexchange carriers and other customers and; (3) the provision of basic telecommunications service. In addition, the Commission is given the authority to review and approve, disapprove or modify the pooling of revenues by telephone companies.

This section also establishes Commission authority to regulate the rates, terms, and conditions for access by interexchange carriers to the facilities of local telephone companies. It is upon this authority that the system of access charges is based—a system which is intended to supplant elements of revenue distribution included in the existing separation and settlements process.

2. *State Jurisdiction.*—Under this section state jurisdiction is continued over local (intraexchange) telephone service just as it is today. The states are required to establish local exchange boundaries within one year after the date of enactment.

If a state fails to act, the boundaries will be established by the transitional joint board. In either case, the boundaries of any local exchange area are to be located entirely within one state, and no local exchange area which includes part or all of one SMSA can include all or part of any other SMSA. A state commission may not make a change in the boundaries of a local exchange area unless the change is approved by the transitional joint board.

The Commission can also delegate to the states the power to establish access charges for small telephone companies. Additionally, any power not specificially granted to the Commission under this bill is reserved to the states.

3. *Regulatory Prohibitions—What Cannot Be Regulated.*—Under this section the Commission and the states are specifically prohibited from regulation of terminal devices (i.e., telephone handsets, PBXs) and data processing.

The Commission is also specifically precluded from using its regulatory authority over carriers providing basic telecommunication service or which have microwave radio licenses to reimpose regulation such as rate of return regulation, market exit and entry regulation, or deregulated service offerings or products.

Section 212—Regulation of Interexchange Carriers

This section has essentially two purposes: first, it outlines the extent of the Commission regulatory authority over carriers who become deregulated under the provisions of the bill, and second, it insures that carriers who are now providing services under state regulation or federal regulation on the day of enactment of the legislation continue under regulation until they are deregulated.

1. *Commission Authority Over Deregulated Carriers.*—The regulatory authority over otherwise unregulated carriers runs to essentially three elements: access charge, national defense standards, and basic telephone service.

a. Access Charge

This provision gives the Commission authority to require an otherwise unregulated carrier to pay an access charge.

b. National Defense Standards

This provision allows the FCC to establish standards and to take appropriate action to promote the national defense and emergency preparedness of the nation.

c. Basic Telecommunications Service

This provision is to insure that ordinary long distance service will continue to be available to all persons upon reasonable request at reasonable and affordable rates.

2. *Continued Regulation of Existing Services.*—Regulation of all existing long distance services (i.e., private line) will continue following passage. However, under Section 215, carriers whose services are subject to effective competition are provided a "fact track" exit from regulation.

Section 213—Classification of Carriers

This section specifies the provisions for determining which carrier or carriers are classified as dominant.

The test for dominance involves two elements. First, the carrier must be furnishing services or facilities in a substantial number of the total markets nationwide. Second, the carrier must have the ability, in a substantial number of those markets, to raise or lower prices without significantly affecting the extent to which customers rely on its services or facilities. Presently, only AT&T is considered to meet this test.

A dominant carrier must meet unique requirements established in the legislation such as the establishment of fully separated subsidiary in order to engage in any unregulated activity.

Section 214—Offering of Services by Dominant Carriers and Other Carriers in Particular Markets

1. *Fully Separated Subsidiary.*—This section mandates that a carrier classified as dominant can only offer services or products on an unregulated basis through a "fully separated subsidiary."

The dominant carrier is also required to have an accounting system in place which insures that costs of the services, facilities, or products offered by the fully separated subsidiary are not subsidized by its regulated services.

2. *Authority To Assert Regulation.*—Section 214(b)(1) also allows the Commission to assert regulation over all interexchange services which have been deregulated under the bill if competition does not, or will not, exist or if it is required by public convenience and necessity.

The Commission's authority is normally subject to formal notice and hearing requirements, however, Section 214(b)(4) gives the Commission the power to act quickly where it finds that there is an imminent risk that a service will cease to be available in a particular market or that there is reasonable cause to believe that there is a violation of the Act being committed by a fully separated subsidiary which poses an imminent risk to a competitive service. Regulatory authority exercised under this expedited process applies for not more than a year.

3. *Definition of Fully Separated Subsidiary.*—To be considered as fully separated the subsidiary may not:

(a) Have more than one director in common with the parent (AT&T) or any of its subsidiaries (i.e., a Bell operating company like C&P) other than another fully separated subsidiary;

(b) Have less than 5 members on its board of directors;

(c) Maintain any books, records or accounts in common with the parent or any of its subsidiaries other than another fully separated subsidiary;

(d) Have a financial structure in common with the parent or any of its subsidiaries other than another fully separated subsidiary;

(e) Engage in any marketing sales, maintenance, operations, manufacturing, development, and applied research in common with the parent or any of its subsidiaries other than other fully separated subsidiaries. The exception to this rule is institutional advertising which is not specifically related to a service, facility or product.

If the subsidiary is not a publicly held corporation, it must prepare its financial statements consistent with the Federal financial reporting requirements that apply to publicly held corporations. Additionally, the fully separated subsidiary must purchase or lease facilities or services from the dominant carrier on the same rates, terms, and conditions as those facilities or services are leased or provided to others.

4. *Violation of Fully Separated Subsidiary Requirements.*—If the fully separated subsidiary fails to comply with any of the requirements of this section, the Commission can regulate the telecommunications service offerings of the fully separated subsidiary and can order the subsidiary to cease offering services or equipment which are incidental to telecommunications until the Commission is satisfied that the subsidiary is in compliance. In addition, the Commission has the authority to fine the dominant carrier or the separate subsidiary up to $500,000. Such fine may not be deducted as a business expense for tax purposes or included as an operating expense for rate-making purposes.

The Commission is required to conduct a study and report to Congress on whether additional structural authority is needed to deal with the dominant carrier, its affiliated organizations, or its fully separated subsidiaries.

5. *Employment Protection Provisions.*—In the event that the dominant carrier establishes a fully separated subsidiary which is not covered by the collective bargaining agreement between the dominant carrier and the labor unions representing its employees, section 214(d) protects the rights of those workers until such time as a new contract has been negotiated.

Section 215—Extension of Lines and Deregulation Provision

This section applies to the dominant carrier (other than its fully separated subsidiary), and all other regulated carriers.

1. *Extension of Lines.*—Section 215(a)(1) requires these carriers to submit a petition to the Commission and have the Commission determine that the public convenience and necessity requires:

(*a*) The construction of any new line or extension of an existing line

(*b*) The acquisition or operation of such line or extension

(*c*) The transmission of telecommunications through such line or extension

2. *Deregulation of Interexchange Services.*—Section 215(a)(2) allows a dominant carrier or other regulated carrier to submit a petition to the Commission to be deregulated in the offering of a service or facility. The dominant carrier must offer the unregulated activity only through a fully separated subsidiary. Non-dominant carriers do not have the fully separated subsidiary requirement. International carriers may not submit petitions for deregulation.

The Commission must grant the deregulation petition unless it determines:

(*a*) That the carrier has failed to show that competition exists in the market or submarket involved; and

(*b*) That granting the petition will not serve the present or future public convenience and necessity.

3. *Deregulation for Non-Dominant Carriers.*—Section 215(a)(3) establishes a "fast track" deregulation process for non-dominant carriers which extends for a period of one year following the date of en-

actment. Under these provisions, the Commission must approve a petition for deregulation within 90 days unless it finds that the public convenience and necessity will not be served. The period can be extended for another 90 days if the Commission believes it is necessary. If the Commission fails to make a determination in this time period, the carrier service or facility is automatically deregulated. A carrier must give notice to users at the same time that it files its deregulation petition with the Commission.

4. *Notice Provision.*—When carriers are deregulated under this section, they must still give notice to the Commission when they commence, discontinue, or reduce any service or facility offering.

Section 216—Requirements Applicable to Furnishing Services or Facilities

1. *Dominant and Regulated Carriers.*—Dominant and regulated carriers are required to do essentially three things:

(*a*) provide services or facilities upon reasonable request;

(*b*) not discriminate with respect to the rates, terms, and conditions for services and facilities;

(*c*) not maintain any unreasonable or anti-competitive restrictions relating to the furnishing, resale, or sharing of such services or facilities.

The Commission is given the authority in this section to specify or to approve the manner, rates, terms, and conditions for the provision of interexchange telecommunication services or facilities offered by dominant and regulated carriers, as well as the manner, rates, terms, and conditions of interconnection.

2. *Dominant Carriers, Regulated Carriers and Interexchange Carriers.*—These carriers must:

(*a*) establish interconnection with any interexchange carrier if a reasonable request is made;

(*b*) establish interconnection with any private telecommunications system, telecommunication facility and any terminal equipment or device which is customer-owned or leased;

(*c*) not discriminate in any unreasonable or anti-competitive manner against any interexchange carriers or customers with respect to the rates, terms, and conditions for interconnection.

3. *Other Carriers.*—All other carriers are required to establish interconnection with any private system or terminal equipment which meets the uniform, minimum, technical standards establish by the Commission. However, this section does not authorize the Commission to review or establish rates, terms or conditions applicable to interconnection.

Section 217—Discrimination and Preferences

This is Sec. 202 of the existing Act renumbered.

Sec. 218—Furnishing of Certain Services, Facilities, and Products by Dominant Carriers

1. *1956 Consent Decree.*—This section permits the dominant carrier, through its fully separated subsidiary, to offer telecommunications services, facilities and products which are incidental to telecommunications on an unregulated basis. The 1956 Consent Decree

entered into by AT&T and the Justice Department bars AT&T from participating in unregulated markets.

2. *Limitations on Unregulated Activities.*—The dominant carrier is specifically precluded from offering any alarm service, cable service, mass media service or mass media product. The dominant carrier is not barred from leasing or otherwise providing facilities for such services to others. However, if the fully separated subsidiary makes facilities available for the provision of any mass media service or product, it must make such facilities available on a nondiscriminatory basis to anyone upon reasonable request. In addition, the dominant carrier would be permitted to offer telephone number or address listings and directory assistance (limited to telephone number, address and business category), weather or time information, or any data retrieval services which do not provide any information which is like or similar to information provided by newspapers, periodicals or broadcasting.

Alarm service means any intrusion alarm service or any fire alarm service provided to the public.

Mass media means television and radio broadcasting, pay television, and printed or electronic publications (including newspapers, periodicals and any service or product like or similar to all or part of the function of a newspaper or periodical.)

3. *Cable/Telephone Company Cross-Ownership Rules.*—Section 218 (c) specifically provides that the FCC's existing rules and authority to make such rules governing the offering of cable service are not affected by anything in this Act.

Section 219.—Regulation of Transactions Between Dominant Carriers and Fully Separated Subsidiaries

1. *Information Flows.*—Subsections (b) and (c) specify requirements with respect to information disclosures by a dominant carrier and its affiliated organizations.

First, the dominant carrier and its affiliates must maintain and file with the Commission a description of the operational protocols and technical interface requirements for connection with any use of the regulated telecommunications network. Any material changes in such protocols or requirements must be reported regularly to the Commission. The dominant carrier and other regulated carriers must regularly report on plans to expand the regulated network, if such information affects connection with or use of the network.

The Commission may also require other information which affects the capacity of services, facilities, or products to function effectively and efficiently if connected to the regulated network. All such information submitted to the Commission will be available to others unless its disclosure would be detrimental to the national defense or security.

Second, a dominant carrier may not disclose to the subsidiary commercial information acquired through its provision of regulated services. The Commission may require, however, that specific categories, such as directory listings, be made available to all, including the subsidiary, on a nondiscriminatory basis.

Finally, the Commission may order disclosure of accounting information required by this Act upon showing a good cause, such as a probable violation of the accounting separation provisions of Section 254.

2. *Assignment of Costs.*—Subsection (d) prohibits the dominant carrier and any affiliated organization from assigning costs of unregulated activities to regulated activities. These costs include research and development costs, and costs incurred before the date of enactment. The Commission has full authority to enforce this section, and section 254, including investigating any transaction or assignment of costs.

3. *Commission Rules.*—Subsection (e) directs the Commission to prescribe, within 1 year of enactment, such rules as may be necessary under this section, and gives it enforcement authority.

4. *Precertification of Unregulated Subsidiary.*—Subsection (f) requires that before any subsidiary of a dominant carrier may be considered a fully separated subsidiary, the carrier must file with the Commission a plan demonstrating that:

(*a*) the carrier and any affiliated organization has an accounting system in place which separates all costs related to unregulated services, facilities, and products from those of regulated services, facilities, and products;

(*b*) the subsidiary complies with the conditions of separation in Section 214(c)(1); and

(*c*) the assets, including capital, to be transferred to the subsidiary have been fairly and properly valued.

The Commission will have 180 days to review and approve or disapprove the plan. During this period, the FCC must provide an opportunity for public comment and seek the opinion of the Justice Department on all aspects of the plan. If it disapproves it, it must identify the deficiencies, whereupon the carrier may amend the plan. The Commission will have 60 days to review, and approve or disapprove the amended plan. Failure of the Commission to act within the specified time periods will constitute approval.

After the plan is approved by the Commission, the carrier will have to notify the Commission of any minor revisions. Major revisions will have to be filed with the Commission for review and approval as described above. An example of a major revision would be the transfer of a component plant of Western Electric to a fully separated subsidiary, since the valuation of that asset would be an important question.

5. *Structural Transition.*—Subsection (g) establishes a phased transition for the separation of manufacturing, development and research activities for offerings of the unregulated subsidiary.

a. Within 4 years, final assembly of products which may be offered only by the subsidiary must be provided by the subsidiary or by nonaffiliates. This includes aspects integral to final assembly, such as quality control.

b. Within 4 years, applied research for, and development of, the subsidiary's telecommunications services, facilities and products (including software), and services, facilities, and products (including software) incidental to telecommunications, must be provided by the subsidiary or by nonaffiliates.

c. Within 6 years, subassembly manufacturing (including associated research and development) for the subsidiary's product offerings must be provided by the subsidiary or by nonaffiliates. The subsidiary may obtain subassemblies from an affiliate, however, if the affiliate also sells them to others at the same rates, terms and conditions.

d. Within 8 years, component manufacturing (including associated research and development) for the subsidiary's product offerings must be provided by the subsidiary or by nonaffiliates. The subsidiary may obtain components from an affiliate, however, if the affiliate also sells them to others at the same rates, terms, and conditions.

The specified time periods may be extended by the Commission if extension is warranted by events beyond the control of the dominant carrier or other good cause. During the transition period, products (including subassemblies, components, and research and development) subject to the time periods specified above may be furnished to the subsidiary by an affiliate on a fully compensatory basis, at amounts not less than the cost allocated to such services or products in connection with the regulated network. Moreover, the rates, terms and conditions may not be more favorable than those in the external marketplace for similar services and products, unless it is demonstrated to the Commission that more favorable rates, terms and conditions result from more efficient operation and lower direct costs.

Additionally, if any new manufacturing facilities are constructed for unregulated services, facilities, or products, these must be owned and operated by the subsidiary.

6. *Limitations on Offerings of Unregulated Subsidiary.*—Subsection (g) also places limitations on the service and product offerings of a fully separated subsidiary.

a. The subsidiary may not offer terminal equipment or terminal devices within 3 years of enactment unless the final assembly is performed by the subsidiary or by nonaffiliates.

b. The subsidiary may not offer existing interexchange telecommunications services or facilities, or those essentially similar to existing offerings unless the Commission should find under Section 215 that effective competition exists in a particular market and that the service can be deregulated.

The Commission is given wide latitude to make certain that the limitations of this subsection are not circumvented by the offering of a service which performs essentially the same functions and which serves essentially the same market.

The subsidiary may not offer services, facilities, or products incidental to telecommunications (other than terminal equipment and terminal devices) unless final assembly and associated development (including software) are performed by the subsidiary or by nonaffiliates. Specific development commenced after approval of the structural transition must be performed by the subsidiary or by nonaffiliates.

7. *Limitations on Dominant Carrier Regulated Offerings.*—Additionally, subsection (g) limits what a dominant carrier may offer on a regulated basis.

a. Basic telecommunications service and intraexchange telecommunications service.

b. Interexchange telecommunications services and facilities (other than basic telecommunications service) until deregulated under Section 215. No new class of telecommunications service (other than basic or intraexchange) may be introduced after 3 years after enactment.

c. Terminal equipment and terminal devices of a type being offered on the date of enactment until 4 years after enactment, or until the structural transition plan is approved, whichever occurs first.

8. *Limitations on Further Requirements.*—Subsection (h) provides that the Commission may not establish any requirements relating to the structure or organization of an affiliated organization or fully separated subsidiary, the activities of the subsidiary, or the conduct of business between the subsidiary and a dominant carrier or affiliated organization, unless they are consistent with this section and sections 214 and 218.

Sec. 220—Determination of Effective Competition

A carrier under this legislation will be considered subject to effective competition with respect to any telecommunications service or facility if there is available in the particular market or submarket reasonable alternatives to such service or facilities which are offered by competing entities.

In determining whether effective competition exists in a particular market, the FCC can also take into account other factors such as the market share of a particular carrier.

PART B—SCHEDULE OF CHARGES; LIABILITY OF DOMINANT CARRIERS AND OTHER REGULATED CARRIERS

Sec. 231—Establishment of Transitional Joint Board

Sec. 231 requires that not later than 90 days after the passage of this legislation a Transitional Joint Board (TJB) will be established. This will be a 5 member TJB consisting of 3 FCC Commissioners and 2 state commissioners. The TJB will exist for a period of 72 months after which time all of its powers and duties will revert to the Commission, except for the authority to make changes and modifications in jurisdictional separation procedures which shall go back to a traditional federal/state joint board.

The TJB is required under this section to make an annual report to Congress.

1. *Purpose of TJB.*—The purpose of TJB is to:

(*a*) provide an orderly transition from separation and settlements to a system of access charges;

(*b*) insure equitable treatment of customers of basic telecommunications service and of competing carriers;

(*c*) provide equitable treatment for terminal equipment in use on the date of enactment and to insure the continued availability of this equipment;

(*d*) develop methods of recovery of investment of plant currently allocated to interexchange telecommunications service.

2. *Authority of the TJB.*—The TJB is authorized to:

(*a*) perform acts, establish rules and regulations, and issue orders consistent with the Act;

(*b*) make minor modifications in the rules with respect to local exchange boundaries;

(*c*) maintain a formula to insure the National Telecommunications Pool has the necessary funds and oversee the distribution of funds from the Pool;

(*d*) administer the National Telecommunications Pool;

(*e*) make changes in jurisdictional separation procedures;

(*f*) determine the relative assignment by intraexchange carriers of the costs of local service to an interexchange access charge;

(*g*) establish methods for the recovery of investment in plant allocated to the access charge;

(*h*) give advice to the Commission on matters regarding nondiscriminatory interconnection between intraexchange and interexchange carriers; and

(*i*) establish and implement the phased elimination of the imputation by state commissions of revenues from directory advertising to the regulated activities of carriers for ratemaking purposes.

Actions taken by the TJB are considered final, but they are appealable to the Court of Appeals for the District of Columbia.

Section 232—Schedules of Charges

This section adopts section 203 of the existing Act dealing with the filing of tariffs. However, the Commission is given the authority to prescribe interim tariffs for a period of up to one year from the date the tariff would otherwise go into effect. This power is in addition to the power the Commission has under existing law to prescribe a just and reasonable charge after a full opportunity for hearing.

Section 233—Access Fees

1. *Purpose of Access Fee.*—The purpose of this section is to establish a system of cost-based access fees for the use of local telephone facilities by interexchange carriers and other customers to the extent they are directly connected to those facilities. The goals of the access fee are to:

(a) achieve equality of treatment among all users of such facilities and to prevent subsidies from intraexchange activities to interexchange activities;

(b) assure that the distribution of revenues is accountable and open to public examination;

(c) achieve flexibility in accommodating changes in market conditions and technology;

(d) establish incentives for efficient investment decisions; and

(e) insure that local telephone companies are equitably compensated for their costs.

2. *How the Access Fee System Works.*—Under this section each local telephone company will submit its schedule of fees to the Commission (except for small telephone companies whose fees may be submitted directly to state regulatory commissions subject to appeal to the Commission).

The FCC or the state commission, as the case may be, may approve, disapprove, or modify this schedule of fees.

The fees will take effect at the end of the three-year period following enactment of this legislation. Prior to that time, all fees for intraexchange access are to be governed by tariffs or contracts in effect as of June 1, 1980 (subject to Commission modification).

The access charge has three components:

(a) all costs which can be identified as being directly caused by interconnection with the local telephone company and all costs of services provided to interexchange carriers by local carriers;

(b) a portion of the fixed costs incurred by the local telephone companies which do not vary with the amount or nature of the traffic;

(c) a surcharge to fund the first two accounts of the National Telecommunications Pool.

3. *The National Telecommunications Pool* (*NTP*).—The purpose of the NTP is to insure that local and long distance rates do not go up substantially or unduly. The money to fund it comes from the access charge or from direct assessments on interexchange carriers.

The NTP consists of three accounts:

(a) The first account will compensate a local telephone company serving under 50,000 main telephones for any costs of serving those telephones that exceed 110% of the national average. The transitional joint board may designate other intraexchange carriers.

(b) The second account will likewise compensate any carrier (including an interexchange carrier which provides service to Alaska and Hawaii) for any costs of connecting with the long distance network that exceed 110% of the national average. It may only be used if deaverage tariffs are filed and higher costs are justified to the TJB or Commission.

(c) The third account in the NTP is transitional and designed to provide funds to local telephone companies to make up any difference between the revenues which they derive from the access charge and the amount currently received from separations and settlements. This account prevents "substantial or undue" local rate increases from occurring during the transition to a cost-based access charge.

The NTP will be established essentially as an accounting procedure. When the interexchange carrier pays its access charge to the local company, the amount designated for the NTP will be carried on the books of the local company. The transitional joint board will adopt formulas for the distribution of funds from the NTP as part of the revenue settlements process of those carriers providing basic telecommunications service.

Provision has been made in this section to insure that funds from the NTP be made available with the least possible paperwork and that payments be subject to subsequent audit and adjustments.

4. *Transition Period.*—This section provides for a six-year transition period during which the TJB is required to ensure that the implementation of access charges does not result in rapid changes in the cost of various services.

Section 252—Valuation of Property (*Depreciation*)

Subsection (b)(1) gives the transitional joint board complete rulemaking authority to establish binding classifications of all property subject to the regulatory authority of the Commission or any state commission and to establish binding methods for recovery of the capital invested in such property. The transitional joint board, for the transition period, and then the Commission together with a joint board shall establish the classes of property used by dominant and other regulated carriers providing telecommunications services, and shall establish the methods for recovery of the capital invested in such property, subject to the right of a regulated carrier to select from among these methods the accelerated methods it wishes to utilize (*see* (b)(2)).

Under subsection (b)(2) the Commission and the state commissions are required to utilize the classes of property and methods of capital recovery established by the Transitional Joint Board and allow the resulting depreciation expense as an opertaing expense for ratemaking purposes. The methods of capital recovery (and the resulting depreciation expense) will be determined as follows. For property in service on the first day of the first calendar year which begins after the enactment of this Act, the depreciation expense shall be computed by the remaining life method of capital recovery. For property placed in service after that date, each carrier shall select an accelerated depreciation method or methods to be applied to each of the classes of property. This selection is to be made from a list of alternatives prepared by the transitional joint board as described above. This section also establishes the dates for effecting the depreciation schedules.

Subsection (b)(3) provides that, after the termination of the transitional joint board, the Commission and the federal-state joint board are required, for ratemaking purposes, to utilize only the rules in (b)(2) relating to the classes of property and methods of capital recovery. During the existence of the transitional joint board, the Commission and the state commissions are required to apply only these rules. Generally, after the expiration of the transitional joint board, the powers of the transitional joint board are to be carried out by the Commission. However, for the purposes of this section, any changes in depreciation rules or methodology must first be referred to a traditional joint board, before the Commission acts.

Section 254—Accounts and Records

The dominant carrier, other than any fully separated subsidiary of the dominant carrier, and all regulated carriers must have and utilize an accounting system which will insure:

(*a*) a proper allocation of costs among various telecommunications services, facilities, and products; and

(*b*) a complete separation of costs between various telecommunications services, facilities, and products which are offered on a regulated basis and the products, services and facilities offered on a non-regulated basis; and

(*c*) a complete separation of costs between the services, facilities and products of the dominant carrier or any affiliated organization (i.e., Western Electric, C&P, AT&T Long Lines) and those of the fully separated subsidiary.

The Commission is required to complete and establish this accounting system not later than 2 years after the passage of the Act. The Commission is also required to submit interim and final reports to Congress.

Section 255—Network Management

This provision permits carriers to meet to design, plan, construct, operate and maintain any network of telecommunications service or facilities. Additionally, these carriers can develop technical standards for the operation of the network as well as file a jointly-agreed-to tariff.

1. *Meeting of Competing Carriers for a Service.*—If the meeting, etc., is between carriers which are competing for a given service, then notice of the meeting must be given to the FCC, and the FCC must be afforded an opportunity to attend. In any event, a transcript of the meeting must be given to the FCC. and the FCC must be afforded an opportunity to attend. In any event, a transcript of the meeting must be made available for public inspection not later than 30 days after the meeting is conducted.

2. *Meeting of Non-Competing Carriers.*—If the carriers which are meeting are not competing for a given service, they do not have to meet the notice and transcript requirements.

3. *Required Meetings.*—There may be occasions when meetings may be required to assure the establishment of appropriate telecommunications networks or for maintaining national defense and security. In this event, the Commission can require a meeting between carriers.

4. *Antitrust Considerations.*—If the meeting of carriers is for the purposes specified in this section (i.e., design, planning a network), it will not be violative of the antitrust laws so long as that design or planning is not itself anti-competitive or in restraint of trade. Alternatively, if the meeting is for purposes other than those specified (for instance, for competitors to meet to fix prices) the provisions of this section would not be an antitrust defense.

PART D—MISCELLANEOUS

Section 280—National Defense and Emergency Preparedness

This section gives authority to the President to require any carrier to furnish telecommunications service or facilities if the President determines that:

(*a*) it is necessary for the national defense or security;

(*b*) there is a threat of war with a foreign nation;

(*c*) the nation is at war with a foreign nation;

(*d*) there exists a State of Peril, disaster, or other national emergency; or

(*e*) the facilities are necessary for the national defense or emergency preparedness of the nation, and there is an immediate need for these services and facilities and such need cannot be met through reliance upon any other source of supply; and

(*f*) all other means of obtaining these services and facilities have been exhausted.

Section 281—Public Participation in Commission and Transitional Joint Board Proceedings

Under this section the FCC is authorized to provide financial assistance for the direct costs of participation in Title II proceedings before the FCC or the TJB.

1. *Who Can Receive Funding.*—In order to receive financial assistance under this section, the person applying for funds must represent an interest—

(*a*) which would not otherwise be adequately represented; and

(*b*) is necessary for the fair disposition of the proceeding; and

Furthermore, the person applying must demonstrate that he/she does not have sufficient resources otherwise to effectively participate in these proceedings.

2. *Commission and Applicant Agreement.*—Once an application for funding is approved, the Commission and the party receiving the funds enter into an agreement. This agreement must—

(*a*) specify the nature and extent of the anticipated representation; and

(*b*) include procedures for examination and review by the Commission of the applicant's expenditures; and

(*c*) specify how much the applicant will receive in advance payments.

3. *How Much an Applicant Can Receive.*—The Commission is authorized to provide assistance of not more than $75,000 to any person for any fiscal year or proceeding.

4. *Liability for Repayment for Non-Representation or Bad Faith.*—If a person receives funding under this section, but fails to provide it or acts in a manner demonstrating bad faith, that person shall be required to pay back to the Commission the amount he/she has received.

5. *Authorized Appropriation.*—For fiscal years 1982, 1983, 1984, and 1985 there is authorized $750,000 per year for Commission proceedings and an additional $500,000 for those years for TJB proceedings.

6. *Small Business Set Aside.*—Subsection (g) provides that small business concerns, defined as those who have 25 or fewer employees, shall receive 25 percent of the appropriated funds under this section.

Section 6—Reciprocity

The Commission has the authority to establish rules and regulations applicable to the entry of foreign telecommunications carriers into, and the offering of foreign telecommunications services in, domestic United States markets for purposes of ensuring that the terms and conditions are reciprocal with the terms and conditions under which United States carriers are permitted to operate in foreign nations.

The Commission is given authority to inquire into any aspect of the services, facilities or products of any carrier in order to determine whether the offering of those services, facilities or products ensures the equitable treatment of the competitive position of United States businesses in international markets.

In conducting any inquiry under this section, the Commission must request and consider the views of the Secretary of State and the United States Trade Representative. The President may veto any final determination if he determines it will injure the foreign policy interests of the United States.

A foreign telecommunications carrier is any common carrier which is an alien or its representative, a foreign government or its representative, a corporation or other entity established under the laws of a foreign nation, or a corporation more than 20 percent of the stock of which is owned or controlled by an alien, foreign government or foreign entity. A foreign telecommunications service means any service provided by a carrier more than 20 percent of the revenues or profits accrues or would accrue to an alien, foreign government, foreign entity or corporation with 20 percent foreign ownership.

Section 7—Unauthorized Interception and Use of Subscription Telecommunications

This section creates civil and criminal penalties for the unauthorized interception of subscription telecommunications which is provided by a carrier. This applies to subscription telecommunications which are distributed by satellite, by microwave or by carrier services such as Multipoint Distribution Service (MDS). Because the legislation does not make changes in Title III of the existing Act, this section does not apply to distribution using broadcast facilities, such as subscription television (STV).

Any person who knowingly carries out an authorized interception of subscription telecommunications or knowingly attempts or conspires to carry out such interception may be liable for damages in the amount of $100 per day for each day the violation occurs, except that total damages may not exceed $1,000. Furthermore, such person shall be fined not more than $25,000 or imprisoned for not more than 1 year or both.

In addition, any person (other than an individual) who knowingly uses the subscription telecommunications for commercial advantage or financial gain shall be fined not more than $1,000,000, and any individual who violates this prohibition shall be fined not more than $250,000 and imprisoned for not more than 18 months for the first violation and not more than 40 months for subsequent violations.

The interception of a subscription telecommunications is not an unauthorized interception if the person involved is the originator of the telecommunications (or his agent), has agreed to pay a fee for the use of the telecommunications, is entitled to receive the telecommunications pursuant to an agreement or contract, or has reasonable cause to believe he is entitled to receive the telecommunications.

No civil action may be commenced under this section after 2 years from the date of the discovery of the alleged violation or after 7 years from the date the alleged violation occurs.

The provisions of this section do not apply to an interception authorized under chapter 119 of title 18, United States Code (relating to wire interception and interception of oral communications).

Section 8—Penalties

This section increases the maximum penalties and forfeitures available to the Commission by substantial amounts. It is intended to strengthen the enforcement of the provisions of Title II of the Act. The section prohibits a carrier from treating any fine levied under the Act as an operating expense for ratemaking purposes.

Section 9—Application of Antitrust Laws

The amendments made to the Communications Act of 1934 are not intended to:

1. Create any immunity to any civil or criminal action under the antitrust laws;
2. Alter or restrict in any manner the applicability of the antitrust laws;
3. Express Congressional intent with respect to liability or relief, including structural relief, in any pending or future antitrust litigation;
4. Limit or effect the ability of the courts to determine liability or grant appropriate relief, including structural relief, in any antitrust litigation; or
5. Prohibit treatment of the dominant carrier and any fully separated subsidiary as separate persons for purposes of the antitrust laws.

Section 10—Technical and Conforming Amendments

This section makes a series of technical and conforming amendments to sections of the Communications Act of 1934 that are otherwise not amended by the provisions of this bill. These amendments are intended essentially to conform the terminology used throughout the Act to that used in this legislation. These changes are shown in the Ramseyer Rule print contained in this report.

The change in the definition of "common carrier" and "carrier" contained in section 3(h) of the existing law is intended to:

1. Make it clear that those persons who share the use of telecommunications services and facilities on a nonprofit basis are not treated as carriers; and
2. That a person providing traditional cable service is not to be considered a carrier for purposes of title II of the Act.

These changes deregulate the shared use of carrier services and facilities and eliminate any inference that Congress, by enacting this legislation with its new definitions of interexchange and intraexchange carriers, intends to decide the question of whether cable should be regulated as a carrier for all or any portion of its services.

OVERSIGHT FINDINGS

There are no formal oversight findings by the Committee pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives.

No oversight findings have been submitted to the Committee by the Committee on Government Operations pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement regarding the inflationary impact of the reported bill:

The Committee is unaware that any inflationary impact on the economy will result from the passage of H.R. 6121.

COST ESTIMATE

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee makes the following statement relative to the cost of the legislation.

The reported bill authorizes appropriations of $750,000 for each of the fiscal years 1982, 1983, 1984, and 1985, with regard to public participation in Commission proceedings and $500,000 for each of the fiscal years of 1982, 1983, 1984, and 1985 with regard to public participation in the transition joint board proceedings.

In regard to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee includes the following cost estimate submitted by the Congressional Budget Office relative to the provisions of H.R. 6121:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 20, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6121, the Telecommunications Act of 1980.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill Number: H.R. 6121.
2. Bill title: Telecommunications Act of 1980.
3. Bill status: As ordered reported by the House Committee on Interstate and Foreign Commerce on July 31, 1980.
4. Bill purpose: H.R. 6121 would make numerous changes in the regulation and structure of the telecommunications industry by amending the Communications Act of 1934. It would free the American Telephone and Telegraph Company (AT&T) from a provision of the 1956 consent agreement with the federal government that prohibits AT&T from competing in unregulated communications markets. Section 219 would restructure AT&T over a transition period of 8 years, creating a separate subsidiary in an effort to eliminate cross subsidies between regulated and unregulated activities. H.R. 6121 would also deregulate competitive telecommunications carriers and would define the role of the Federal Communications Commission (FCC) in the deregulation process. Section 231 would establish a Transitional Joint

Board (TJB) to assist in the transition from separation and settlements to a system of access charges.

5. Cost estimate:

Estimated cost:

Fiscal year:	Millions
1981	$7
1982	11
1983	10
1984	8
1985	5

The costs of this bill fall within budget function 370.

6. Basis of estimate: For the purposes of this estimate, it is assumed that enactment of H.R. 6121 will occur around October 1, 1980.

In preparing a cost estimate on H.R. 6121, it is necessary to separate the costs that would accrue to the federal government as a result of this legislation from the costs that would have occurred in the absence of any new legislation. For example, the FCC has already begun the process of deregulating telecommunications carriers as a result of its Second Computer Inquiry decision and Competitive Carrier ruling. Thus, recent actions by the FCC have clearly established a trend in the direction of creating a more competitive marketplace, and it is likely that additional resources would be required to implement current rulings.

A major issue affecting potential costs of the bill is the role the federal government will assume in the transition process. Relying upon the private sector to ensure an equitable allocation of costs and revenues would reduce the resources required by the federal government, but at the same time would probably result in extensive litigation, or perhaps even delay creation of a competitive environment, consistent with the intent of the legislation. The level of involvement will ultimately be decided by the Congress, particularly through the appropriations process.

Finally, although H.R. 6121 may reduce the resources required by the federal government in the long term (since the marketplace would become more responsible for determining the availability, quality, and cost of telecommunications services), it is expected that some initial short-term costs will be incurred. Thus, in the first 6 to 10 years after the date of enactment, additional personnel will be required by the FCC and the TJB to ensure an efficient and equitable transition process.

Outlined below are the major items in H.R. 6121 which have a potential cost impact. Costs are adjusted for overhead, benefits, and inflation.

Deregulation of Non-Dominant Carriers

Section 213 establishes a deregulation process for non-dominant carriers. The FCC has already established such procedures regarding competitive carriers in its Competitive Carrier ruling; therefore, it is assumed that the data needed for economic analysis required for this task is or would be available for determining the status of a carrier. Costs for reviewing applications or revision of the rule-making to conform with the act are not expected to exceed $100,000 in fiscal year 1981, and to be minimal thereafter.

Deregulation of AT&T

As a result of the Second Computer Inquiry, the FCC is already implementing some of the reforms directed by the bill, i.e., allowing AT&T to enter the data processing and terminal equipment markets, although requiring AT&T to establish a separate subsidiary(ies) for this purpose. Currently in the process of reconsideration, the expanded market proposal may take years to resolve. H.R. 6121 would provide a legislative mandate for these changes, while specifying the requirements of the separation.

The FCC will require more and different kinds of data, as well as a more detailed cost reporting system, in order to adequately assure compliance of the AT&T separation process. This new system would be required without enactment of H.R. 6121, although probably not as soon. The resources needed to regulate AT&T and its subsidiaries will certainly not be less, and may likely be even more than that currently required, depending upon the degree of surveillance desired. FCC legal costs would likely decrease if H.R. 6121 were enacted, since potential litigation resulting from current appeals would be avoided. On the other hand, as separate AT&T subsidiaries are set up, the FCC may be faced with additional requirements to regulate the boundaries of separation, especially in the area of financial transactions, as well as required to handle litigation resulting from due process.

Transitional Joint Board (TJB)

Section 231 would establish a five-member TJB, consisting of three FCC commissioners and two state commissioners, with responsibility for administering the transition to a system of access charges. The Board would be established 90 days after enactment and continue operations for 6 years, after which time its authority and responsibilities would revert to the FCC.

H.R. 6121 authorizes the TJB to appoint staff, but does not specify a limit on the number, nor authorize any appropriations for this purpose. It is estimated that the TJB would require a staff director and clerical support, and that each commissioner would require a minimum of three staff, including an attorney, a financial analyst or accountant, and clerical support, for a total TJB cost of approximately $700,000 in fiscal year 1981, $1.4 million in fiscal year 1982, and $2.0 million in each remaining fiscal year. It is assumed that the TJB would establish an office in Washington, D.C., although meetings would be held periodically throughout the United States. It is also assumed that the two state commissioners would remain on the state payroll, with travel and per diem provided by the TJB. Additional staffing requirements are itemized, as necessary, in the following sections.

Exchange Boundaries

The TJB has authority to make minor modifications to rules regarding establishment of boundaries for those exchanges which encompass two or more Standard Metropolitan Statistical Areas (SMSAs) or more than one state. Under H.R. 6121, the states have been given the authority to set these boundaries, and it is assumed that most of them will find it in their interest to do so. It is expected that the level of involvement by the TJB will be minimal, and could be done by two professional staff members at a cost of approximately $100,000 in fiscal years 1981 and 1982.

Remove Terminal Equipment From Rate Base of Carriers

In the Second Computer Inquiry, the FCC began a process of ordering AT&T and General Telephone and Electronics (GTE) to remove terminal equipment costs from their rate bases. Similarly, the TJB would be required to develop a transitional plan for the equitable recouping of terminal device costs. H.R. 6121 would require the removal of all terminal equipment costs from all rate bases, however. The results are important if cross-subsidization by carriers is to be avoided. Consequently, the TJB would probably need to contract out cost studies to establish the value of the terminal equipment for determining depreciation reserves.

Additionally, it may be necessary to ensure compliance with the rules set up by the TJB, although this would be required even without H.R. 6121. What the legislation would do is affect the timing of the process as well as require some additional workload, although that increment is hard to measure. It is estimated that the cost of the studies, plus implementation and compliance requirements resulting from H.R. 6121, would range between $1 million and $4 million annually in each fiscal year 1981 through 1984, depending upon the degree of monitoring conducted. For purposes of this cost estsimate, it is assumed that the cost would be approximately $1 million in fiscal year 1981, $2 million in fiscal year 1982, and $3 million in both fiscal years 1983 and 1984.

Access Fees

The TJB is authorized to make modifications in the Separations Manual and Division of Revenue procedures, which provide a mechanism for determining the total revenue requirements of each exchange carrier for access by interexchange services. Currently, the FCC is reviewing access charges, but the legislation would require more sophisticated cost accounting by carriers in order to deal with both intrastate and interstate tolls. It will be necessary to identify the cost components, determine subsidies, and equitably redistribute revenues. The change in the allocation of costs and different boundaries will also require further rewriting of the Separations Manual, an industry guideline to costing principles. Previously updated in 1971 within one year, the FCC now estimates the process will take approximately three years, given the newly created competitive and technically sophisticated market. It is estimated that five professionals, plus clerical support, will be required for the first three years at an estimated $300,000 annually over and above those resources which would be required without the legislation.

It will be necessary to develop a new methodology for allocating costs between the new jurisdictional boundaries. Once a cost allocation system has been devised, revenues can be divided up and allocated to carriers. Since each carrier's profit is at issue, however, many may demand the right to participate in rewriting the procedures. States may also desire to become involved. Probably a minimum of 20 additional staff, at a cost of approximately $1.5 million per year in fiscal years 1981 through 1983, would be required just to monitor the activities of the industry. Depending upon the accountability desired by the Congress, and the degree to which the FCC and the carriers become involved in the process, the costs could be significantly higher.

The TJB also has the responsibility to allocate joint and common costs for each exchange carrier for providing access for interchange services. The FCC currently has a methodology it uses to distribute costs, but would need to sample and verify the data necessary to develop procedures for cost allocations. The resources required to carry out this responsibility depend to a great extent upon the number of exchanges as well as the number of carriers within each exchange. Even without enactment of H.R. 6121, the FCC would need to address this problem, although currently the FCC is planning only to set the formula for cost allocation and not determine individual cost allocations. It is not possible at this time to measure the additional cost of this provision, if any.

A key role of the TJB will be to devise a formula to determine the amounts which must be paid by interexchange carriers over and above access fees. The excess becomes part of the National Telecommunications Pool (NTP), and will be redistributed to carriers to ensure that local and long distance rates do not go up substantially during the transition to a cost-based access charge. Widespread disagreement is expected over the formula for division of the revenues. Consequently, in the short term, the TJB will probably need additional staff to oversee the activities of the carriers to guarantee a fair and efficient distribution system. If the carriers are allowed to run the system without adequate oversight, it is conceivable that smaller entities could suffer severe dislocation. Once the distribution formula is in place, however, staffing needs might lessen. A professional staff of 25, plus clerical support, at an estimated cost of $1.5 million in fiscal year 1980 and $2 million in each fiscal year 1982 through 1986, would probably be a minimum requirement.

Tariffs

The FCC will be required to approve, disapprove, or modify tariffs for selected regulated carriers. A cursory review could be done with existing staff; a review which includes verification of the cost allocation process in light of the new competitive marketplace would require additional staff. An increase in effort, however, would likely be offset by a decrease in workload resulting from deregulation of carriers, as authorized in H.R. 6121. It will be necessary for the FCC to protect the public rate base and to protect the boundaries between the dominant carrier and its subsidiary even without legislation, however.

Uniform System of Accounts

The FCC is required to establish a chart of accounts to ensure a proper allocation of costs among various telecommunications services, facilities, and products. The FCC must revise its Uniform System of Accounts, but it is not likely that this process could be completed within the 2-year time period (as mandated by H.R. 6121) without additional resources. According to the FCC, approximately 30 additional staff would be required to comply with the mandate, at an estimated cost of $2 million in each fiscal year 1981 and 1982.

Public Participation

The bill authorizes $750,000 annually for public participation in FCC proceedings and $500,000 annually for TJB proceedings beginning in fiscal year 1982 and continuing through fiscal year 1985.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Mary Maginniss.
10. Estimate approved by:

James Blum,
Assistant Director for Budget Analysis.

Departmental Views

U.S. Department of Justice,
Washington, D.C., February 8, 1980.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: During the course of the Subcommittee on Communication's mark-up of H.R. 6121, the "Telecommunications Act of 1980," a number of questions were raised concerning the views of the Department of Justice. Specifically, our views were solicited regarding the impact of the bill upon the Department's ongoing antitrust litigation against AT&T,[1] the continued applicability of the antitrust laws generally, and the Department's 1956 consent decree against Western Electric and AT&T.

EFFECT ON ANTITRUST ENFORCEMENT

A. Pending and future litigation

We do not believe that H.R. 6121 as currently written would have or is intended to have any negative impact on either the pending AT&T litigation or the continued application of the antitrust laws. If the Committee believes that there are any doubts in this regard, clarifications in the bill could alleviate those concerns. Moreover, the Committee can in any event assure, as I believe it will, that the legislative history of this bill amply and clearly reflects the intent of Congress not to affect any aspect of the AT&T lawsuit or future antitrust litigation.

The Department of Justice fully supports the avowed purpose of H.R. 6121 to maximize competition in the telecommunications field. Toward that end, we believe that those provisions of the bill that would (1) mandate equal access to local telephone exchange facilities and (2) divide regulatory jurisdiction between Federal and state authorities with reference to interexchange service on the one hand and intraexchange on the other, are appropriate steps in the right direction.

H.R. 6121, like companion bills now being considered by the Senate, makes heavy reference to the need for fully separated subsidiaries, requiring arms-length and non-discriminatory relationships between such subsidiaries and AT&T as a means of lessening the competitive problems attributable to the present structure of AT&T, the dominant telecommunications firm. While a step in the right direction, separate subsidiaries clearly are an imperfect substitute for the fundamental structural and ownership changes the Department is seeking in the AT&T case. Thus, a requirement of separate subsidiaries cannot eliminate the incentive of such subsidiaries to discriminate in favor of their affiliates or of AT&T to seek to circumvent regulatory contraints on its behavior. A more effective means to remove both the incentive and the ability to engage in anticompetitive behavior lies in some form of divertiture—which, of course, is the objective of the government's AT&T case.

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[1] *United States* v. *American Telephone & Telegraph Co.*, Civ. No. 74-1698 (D.D.C.).

To preserve the potential for such effective court-ordered relief, the Subcommittee quite properly included an antitrust saving clause in H.R. 6121. The language of the savings clause, as drawn, clearly leaves unaffected pending or future antitrust litigation and any form of relief—including divestiture—which might be deemed appropriate on the facts as found. However, as previously stated, language could be added if the Committee were to conclude that any doubt remains as to this point.

Similarly, the Committee may well wish to buttress the statutory antitrust savings clause through the inclusion of language in the legislative history which explicitly sets forth the fact that Congress in no way intends to affect the outcome of the Department's antitrust suit against AT&T, nor to preclude or affect the availability of judicially ordered divestiture as a remedy, should the facts found so warrant.

B. The 1956 consent decree

The 1956 *Western Electric* consent decree concluded antitrust litigation initiated by the Department of Justice to challenge AT&T's monopolization of the telecommunications equipment market. As we have noted in the past, a fundamental premise of this judgment was that absent structural change in the Bell System, the best alternative from a competition policy perspective was to confine AT&T's monopoly power to publicly regulated communications. Confining AT&T to its traditional arena, subject to FCC regulation, would, it was thought, minimize AT&T's ability to exploit its power in anticompetitive fashion in unregulated markets.

The Administration's position as to the continued applicability of this approach as part of a complete package of legislative changes was set forth in statements before the Subcommittee of Alfred Khan and Henry Geller, as well as in the Primer, and will not be repeated here. The Department's views, in the context of its litigation responsibilities, have also been set forth at length and recently, and have not changed.[2]

The Department remains available to assist the Committee in every way possible in pursuit of its important efforts to enhance competition in the communications industry.

Sincerely yours,

Sanford M. Litvack,
Special Assistant to the Attorney General.

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[2] See Comments of the U.S. Department of Justice before the Federal Communications Commission In the Matter of the Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry) (Oct. 12, 1979).

U.S. Department of Commerce,
Washington, D.C., January 21, 1980.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of the National Telecommunications and Information Administration on H.R. 6121, a bill "To amend the Communications Act of 1934 to make certain revisions in the provisions of such Act relating to the regulation of telecommunications activities." This important regulatory reform legislation that we strongly support has been carefully reviewed.

H.R. 6121 has five key features. First, the bill would amend title II of the 1934 Act (47 U.S.C. 201 *et seq.* (1976)) by adding policies and purposes language directing the Federal Communication Commission to regulate domestic communications only to the extent that competitive market forces are plainly inadequate to fulfill clearly defined social goals (proposed new sec. 201). The FCC would be directed to rely to the maximum extent possible on competition and to foster the emergence of a more competitive commercial environment. The bill as now drafted would also, in essence, deregulate certain communications firms and activities that are now workably competitive, a step that we fully support.

The policies and purposes provisions of H.R. 6121, if enacted, would constitute substantive law. See, *e.g.*, *Oregon* v. *Mitchell*, 400 U.S. 112, 131 (1971) (opinion of Douglas J.); *American Airlines, Inc.* v. *CAB*, 192 F.2d 417, 420 (D.C. Cir. 1951). Section 201 of H.R. 6121 would thus change existing law which the courts have construed as limiting the ability of the FCC to sanction competition and to use marketplace forces as a regulatory tool. See, *e.g.*, *AT&T* v. *FCC*, 572 F.2d 17, 26 (2d Cir. 1978); *Hawaiian Teleph. Co.* v. *FCC*, 498 F.2d 771, 777 (D.C. Cir. 1974). Consumers clearly have benefited from the more efficient pricing and expanded service choice that competition has produced in the domestic communications field. We therefore strongly support the enactment of these provisions of H.R. 6121 that would facilitate greater competition.

Second, H.R. 6121 would modify the provisions of the 1956 Western Electric consent decree and related FCC rules that now bar AT&T from offering consumers new services that are commercially and technically incidental to communications, such as data processing and information services (proposed new sec. 214).[*] Under the bill, AT&T would be allowed legally to offer these auxiliary services through a fully separated subsidiary, provided that the firm first adopts a sound cost-accounting system aimed at insuring that competitive services will not be cross-subsidized by monopoly telephone operations. See perproposed new sec. 214(a)(2). We believe that AT&T should be permitted to compete in data processing markets that are becoming increasingly indistinguishable from telecommunications. At the same time, however, we believe that safeguards to prevent cross-subsidies should be adopted. The provisions of H. R. 6121 concerning the 1956 consent decree strike a reasonable balance, in our judgment, and are also consistent with the NTIA Primer.

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[*] See ***United States*** **v.** ***Western Electric Co., Inc. et al.***, **1956 CCH Trade Cas. Para. 63,246 (D.N.J. 1956 (consent decree); 47 CFR Sec. 702(c) (1976 rev.). See generally** ***IBM*** **v.** ***FCC***, **570 F.2d 452, 454 (2d Cir. 1978);** ***GTE Service Corp.*** **v.** ***FCC***, **474 F.2d 724, 730 (2d Cir. 1973).**

Third, H. R. 6121 proposes a generally rational and workable replacement for the present industry devised and administered "separations" process, whereby some of the costs of local telephone service are now borne by intercity services. The NTIA Primer, forwarded to the Congress in September 1979, discusses the steps that we believe are necessary to insure an orderly transition to a more competitive communications environment and more widespread use of cost-based pricing. Those steps will not be repeated here.

In order to be satisfactory to the Administration, we believe that any replacement for the current separations process should reflect four essential policy goals. One, there should be primary reliance on a local facilities access charge that will be assessed equitably on all intercity carriers that make use of those local facilities. Two, any subsidies that are involved should be of known magnitude and direction. Three, subsidies should be disbursed only as shown to be necessary to support basic and essential telecommunications services. And, four, the primary control of this process should be subject to public scrutiny and be fully auditable.

At present, NTIA's expert staff and the Committee's staff are working cooperatively to refine the transition and related provisions of H.R. 6121 (sections 231, 232). The bill as drafted generally reflects these four essential components.

Fourth, H.R. 6121 proposes certain important changes in present telephone company arrangements which are aimed at lessening substantially the potential for anticompetitive conduct that is inherent in the present combination of competitive and noncompetitive services and facilities. Under proposed new section 214, for example, competitive intercity communications services such as private line services could be offered by dominant carriers on an unregulated basis only through fully separated subsidies. Similarly, under the bill there would be greater "unbundling" of local exchange services and long distance telephone offerings. Appropriately, however, proposed new section 280 would provide the Executive with the authorities necessary to safeguard vital national defense and emergency preparedness interests.

Finally, H. R. 6121 would make a number of changes in present law to promote more effective FCC regulation of telephone services that are now not competitive. Proposed new section 216(a)(3), for example, would require dominant carriers to allow the resale of all services subject to FCC authority and not just private line offerings as at present. Overall, H.R. 6121 should make it possible for the FCC to focus on the effective regulation of monopoly telephone services since the Commission would no longer be required to regulate firms and services better regulated by competitive marketplace forces.

In conclusion, the NTIA Primer discusses in substantial detail the changes in existing communications laws that the Administration believes are required and should be addressed by Congress at this time. In this brief report we have reviewed only the key features of H.R.

6121. A fuller and more extensive discussion is contained in the Primer, which we are forwarding with this report and request that it be considered for inclusion in the record.

The Administration believes that domestic telecommunications regulatory reform is a priority matter. H.R. 6121 as introduced would achieve necessary changes aimed at assuring both more effective competition in this field and more effective regulation of those services that are not yet workably competitive. There can, of course, be improvement and refinements, and NTIA's staff has been working with the Committee's staff to develop a revised version of this proposed legislation that we believe will further the public interest. Accordingly, NTIA urges prompt action on H.R. 6121.

The Office of Management and Budget has advised that it has no objection to the submission of this report to the Congress.

Sincerely,

HENRY GELLER.

Enclosure.

NTIA COMMENTS AND RECOMMENDATIONS ON COMMUNICATIONS COMMON CARRIER LEGISLATION

EXECUTIVE SUMMARY

Background

Dramatic advances in telecommunications and computer technology have produced a significant and growing amount of competition in the telephone industry. New firms are entering the market to provide specialized data and voice services and equipment, as well as more traditional long distance telephone services. It is crucial that government policy keep pace with these changes so that the public can reap the full benefits of permitting U.S. industry to advance and innovate in this dynamic market.

However, the Communications Act of 1934 was drafted when ordinary voice telephone and telegraph were virtually the total market. Terminal devices then were the telephone handset and the basic teletypewriter. The transmission medium was ordinary copper wires, and switching was done either manually or with complex electromechanical systems. Automated data processing services did not exist.

In contrast, terminals today range from the familiar dial telephones to literally hundreds of different devices such as facsimile, word processing, banking, data processing, and automatic answering terminals plus sophisticated key (push-button) telephone and PBX systems. Similarly, services include not only telephone and telegraph offerings, but also high speed computer (data) communications, electronic message, video transmission, and teleconferencing services. There are now a multiplicity of transmission mediums available including microwave, satellite, coaxial cable, and optical waveguide (fiber optic) systems and switching is increasingly being done by sophisticated computers that are capable of providing a host of specialized services.

The 1934 Act is no longer adequate as a statement of national policy. Certain provisions impede the delivery of technologically advanced and lower cost goods and services in the increasingly important information sector of the nation's economy. Congress can and should remedy this situation by making a limited number of straightforward changes in the Act.

If the Congress fails to make these changes, the inevitable consequence will be a continuation of a longe series of disruptive regulatory and court challenges which will find telecommunications policy being established by the judiciary system under the inadequate guidance of an outdated statute. The ultimate result will be that the introduction of new products and services that are vital to productivity increases in the information sector of the economy will be held back and consumers will bear the cost of regulations that are unnecessary in a competitive marketplace.

The issues of competition

The only guidance given the FCC in Title II (the common carrier portion) of the 1934 Act is a vague public interest standard. This simply tells the agency to balance all factors and do what it thinks is right. Since competition is just one more factor to be considered in the decision making process, it has enabled established carriers enjoying a *de facto* monopoly to subject emerging competition to lengthy regulatory and court proceeding. This process holds up service to the public, creates uncertainty in the investment community, raises entry barriers for innovative small firms, inhibits growth, and encourages established firms to expend valuable resources in the regulatory, judicial, and policy arenas rather than competing in the marketplace where the public will benefit.

Given consumer demand and technological advances, the shift to competition was inevitable and will continue. Congress should affirm it by placing in the Act the policy that the Commission must support and promote competition in the communications marketplace unless it can be demonstrated in specific circumstances that competition will not succeed because there are fundamental market deficiencies (e.g., where economic forces dictate that a monopoly structure will be the inevitable result of any attempted competition). Some regulation will remain necessary, but, if the full benefits of competition in this sector of the economy are to be achieved, the residual regulation must be confined to that necessary (i) to achieve purposes not fully met by competition, for example, to assure the continued universal availability of basic telecommunications services at reasonable rates, and to promote the national defense and security and emergency preparedness, or (ii) to manage the transition to the competitive industry environment sought by the legislation.

Finally, while the established carriers (the Bell System and the 1500 independent telephone companies) should not be protected against competition, all carriers should be given Congressional assurance that the statutory affirmation of competition will not impede the continuation of reasonable cooperative efforts to design, implement, and operate a nationwide network.

The issue of deregulation

The issue of competition leads to a second and, in our opinion, *the* most important issue—deregulation. If unnecessary regulation of established and emerging enterprises results, then many of the benefits of competition will be lost. Under the 1934 Act, the Commission's power to forbear from regulation is still *an* issue, even when the public is clearly protected against the abuse of market power. Unnecessary regulation of competitive markets not only represents a waste of taxpayers' dollars, but also enables firms to use the regulatory process to impede their competitors and delay new services. The spector of regulation and appellate challenges and even the fact of the uncertainty over whether the Commission has the power to forbear from regulation has a chilling effect on investment and growth. Given the widely recognized merging of communications and data processing technologies and services, there is concern that regulation is not only a threat to competition in communications but a threat to the highly innovative and dynamic data processing market as well.

At the least, the Commission should be given explicit authority to forbear from regulation which does not serve the purposes of the Act. To insure against the debilitating effects of over-regulation, Congress should also preclude the Commission from regulating in certain circumstances: (i) when a firm lacks market power (e.g., an MCI, SPC or resaler); or (ii) when a dominant firm is offering service in an area with effective competition and in a manner insuring against anticompetitive abuses (i.e., a fully separated subsidiary). Otherwise, unnecessary regulation will continue in markets like terminal equipment or data processing. These options and our recommendations are described in detail in the full text. In our view, legislation should specify that, other than ordinary long distance, all markets should be initially deregulated, with the FCC having the authority to re-enter if conditions so require.

Problems involving AT&T

There are five issues concerning AT&T that stem primarily from their dominance in common carrier communications. There are the questions of (a) the 1956 Consent Decree, (b) AT&T's provision of mass media information services, (c) the relationship between Long Lines activities and the Bell Operating Companies, (d) the relationships between Western Electric Company, Bell Telephone Laboratories, and Bell Operating Companies, and (e) the effects on the applicability of the antitrust laws.

(*a*) *Consent Decree.*—Currently the ability of AT&T to provide facilities or services with an information or data processing component is in doubt because of the 1956 Consent Decree. It enjoins AT&T from engaging in any business other than the furnishing of communications common carrier services that are subject to regulation. The Decree was written in an era when telecommunications services and information or data processing services were clearly separate and distinct. These two technologies are continuing to merge and both regulated telecommunications and unregulated data processing vendors desire to offer—and customers demand—services which combine the two. Without modification of the Consent Decree, Bell may be precluded from offering such hybrid services and the public is thereby deprived of the benefits of its competition. Equally as undesirable, the FCC—under pressure from potential customers and AT&T—may extend its regulatory umbrella in order to allow Bell to offer a combined service. This has the effect of unnecessarily and artificially extending regulation into the information industry. With the exception of mass media information services described below, Congress should correct this situation to allow AT&T to engage in unregulated telecommunications and incidental activities with appropriate safeguards (i.e., a full separated subsidiary).

(*b*) *Mass media, information service.*—Because of the size and wealth of AT&T and its control over the communications facility infrastructure, we believe that they should be statutorily prohibited from programming mass media services designed to inform the electorate on issues of public concern, e.g., broadcasting, cable and pay cable television, video newspaper/magazine publishing.

(*c*) *Relationships between long lines activities and the local operating companies.*—Ordinary long distance telephone service is provided by a "partnership" arrangement between (1) the AT&T Long Lines Division and the Bell Operating Companies (e.g., Pacific Telephone and Telegraph Co.) and (2) the 1,500 independent telephone companies. The operating companies provide the local exchange facilities which both the partnership and their emerging competitors depend upon. Since these are monopoly facilities, the new carriers are forced to rely upon their competitors for service, and there is thus potential for anticompetitive abuse. Supporters of the existing structure argue that it is essential to the provision of high quality economical telephone service. Opponents argue that the long-haul facilities can and should be separated from the local operations. This issue might be left to the Commission for resolution under existing authority, in light of the purposes of the Act and the then prevailing competitive conditions in this dynamic field.

(*d*) *Relationships between Western Electric Company, Bell Telephone Laboratories, and the Bell Operating Companies.*—Western Electric, a wholly owned subsidiary of AT&T, manufactures a substantial share of the equipment used in the Bell System and virtually 100 percent of selected product lines (e.g., toll-switching equipment). Western Electric's affiliation with the Bell companies and its dominance in supplying their equipment needs has raised questions as to whether independent equipment manufacturers are unfairly disadvantaged in their attempts to penetrate the internal Bell market. Proponents argue that this vertical integration results in lower product prices and better service to the telephone ratepayer. There are a number of options. While we recommend that AT&T Operating Companies be required to follow procurement policies designed to open a substantial portion of this market to fair competition, we believe that, in view of the complexity of these issues and their pendency in a long-standing FCC docket, the Congress should encourage the FCC to resolve them within a specified time period.

(*e*) *Impact on Pending antitrust suits.*—We believe that the legislation should be strictly neutral as to pending antitrust suits and any future litigation. Whatever position or arguments the plaintiff or defendant had before the legislation should remain and be unaffected. The evidence in the antitrust case should be evaluated on the merits by the courts, and, if called upon to do so, the courts should fashion a remedy in the case based upon all factors before it. The legislation should be explicit on this score—i.e., should reflect this strict neutrality in terms similar to those used here.

The issue of Federal/State jurisdiction

Today telephone service is subject to two levels of government jurisdiction. Individual state governments regulate local service and long distance (toll) service that originates and terminates within their borders. The Federal Government, through the FCC, regulates interstate long distance service. This division of jurisdiction between Federal and state regulators has always created some strains, and these strains have been increased in recent years because of the shift to a procompetitive policy by the FCC. While the courts have repeatedly affirmed the Commission's authority and preeminence in this area, these conflicts reflect, among other things, the fact that telecommunications is increasingly becoming an interstate and international activity.

Since long distance service or interexchange service is virtually the same whether or not it crosses state lines, the existing jurisdictional division is not a natural point of division on technical, economic, or regulatory grounds. The long distance services—both interstate and intrastate—are generally open to competition while local service in many areas will likely remain a virtual monopoly for some time to come. Because of these and other factors, the jurisdictional division should be changed so that the FCC has jurisdiction over all long distance (interexchange) service while leaving the states with jurisdiction over local service. Because of their importance to competition in long distance service, Federal jurisdiction should be retained over local facilities or service offerings which are used primarily for the origination and/or termination of interexchange traffic on local facilities.

The issue of access charges

Local telephone facilities (e.g., the telephone instrument itself, the wires leading to the central office, and the switch in the central office) are used in the provision of both intrastate and interstate services. Because these services are under separate regulatory bodies, it is necessary to divide certain of these local costs between the two jurisdictions. Today, the process for doing this is known as separations and settlements. Costs which vary with usage are relatively easy to allocate, but the division of fixed or non-traffic sensitive costs is inherently somewhat arbitrary. By shifting these costs between services/jurisdictions, lower local (intrastate) rates can be achieved at the expense of higher long distance rates or *vice versa*. Over the years, the proportion of costs assigned to interstate long distance services has been increased. In part, this may have occured because technology and driven the cost of providing long distance service down, while the cost of providing local service was rising. Thus, interexchange services were able to bear an increased share of non-traffic sensitive costs and contribute heavily to the cost of providing facilities which enable local telephone subscribers to access the local telephone network.

However, this process—but not necessarily the result—has been criticized because (a) it is done within the telephone industry and is not readily amenable to public accountability; (b) it may provide economic incentives for local operating companies to discriminate against the new competitive long distance carriers; and (c) it lacks flexibility to adjust to rapidly changing marketplace forces and technology. On the other hand, the process has been defended on the basis that it is crucial to the maintenance of local rates at affordable levels, it provides the economic incentives which encourage local operating companies to act in the best interests of the existing nationwide toll network, and within the basic framework it can be changed to allow it to be used in a competitive environment.

There is general agreement among interested parties that the existing separations and settlements must be changed in order to accommodate the effects of competition. Congress, we believe, should directly address the issue, and turn to an access charge system. Under this concept, all long distance carriers would pay a non-discriminatory charge to local telephone companies to cover part or all of the local costs associated with the origination and termination of intercity services. Numerous access charge proposals have been introduced which differ in timing and control of the transition from separations and settlements to the ultimate objective of non-discriminatory access charges.

However, there are two major unresolved issues. The first centers around the need for and the degree of intercompany polling of revenues to assure the availability of basic telephone service. The second issue centers around the increasing fraction of costs that are being assigned to interstate long distance service.

Regarding the first issue, we believe that it is necessary to limit intercompany pooling to eliminate economic inefficiencies and competitive inequity inherent in the present system. On the other hand, it is strongly contended by the telephone industry that the present pooling arrangement is necessary to provide the economic incentives which encourage the individual local telephone companies to act in the best interests of the overall nationwide tool network, and that fairness to competitors can be achieved without disrupting the salutary present pooling (i.e., by an access charge applicable equally to the partnership and the new competitors).

In the circumstances, we recommend giving the Commission or a Joint Board the authority to make future determinations on pooling after a three year transition period. It could take into account the current conditions, and the action best suited to meet the Act's purposes in these conditions.

Under the formulas currently used for the separation of costs between local and intercity services, the fraction of local non-traffic sensitive costs being assigned to intercity toll services has been increasing at a significant rate. Regarding the second issue, some parties have advocated permitting this trend toward lowering the cost of local service at the expense of long distance service to continue as long as possible, although there are few in the telecommunications industry who believe that even the present assignment of non-traffic sensitive costs to intercity toll services can be sustained indefinitely in a free competitive market. Because the assignment of these costs is of vital importance to nearly all telecommunications carriers, there has been a lively debate over the question of how the assignment of local non-traffic sensitive costs should be treated in new common carrier legislation. The available options range from measures designed to artifically sustain the status quo to measures which would mandate a substantial reduction in the local non-traffic sensitive costs assigned to an average minute of intercity traffic. We believe the ideal solution would be to allow the forces of a competitive market to determine the assignment of these costs. Absent effective competition in the local-distribution market, it is believed that this ideal can be most closely approximated by flexible regulatory control of the non-traffic sensitive cost assignments based on a continuing assessment of the changing market conditions which are relevant to individual telephone operating companies. Therefore, we would recommend that the Commission or Joint Board should be given the discretion to gradually reduce the assignment of non-traffic sensitive costs to interdistrict traffic as competitive conditions change.

In order to protect against unacceptable rate deaveraging or high costs in unique situations, we recommend the creation of a National Telecommunications Pool under the direction of the FCC or Joint Board to provide direct subsidies where they are needed. All directly or indirectly connected carriers paying Federally regulated access charges would contribute to the pool.

As for the agency to manage the transition, there are three options: a specially created Transition Board, the FCC, or a special Joint Board. We recommend the latter because it includes the vital state interest. Whatever option is selected, there must be adequate resources to do the job.

National security/defense

Congress should separately recognize and declare the vital importance of the Nation's telecommunications resources to national defense and security and emergency preparedness. Without some legislative safeguards, moreover, deregulation and increased competition may not serve our collective interest in having a telecommunications system which is capable of meeting the needs of national security and defense and emergency preparedness. The growth of competition could reduce both the centralized management capability of today's system and the carriers' willingness to continue some of the unilateral actions they have historically undertaken to enhance the survivability and restorability of the Nation's telecommunications resources. It is also possible, however, that increased competition could enhance the system's capabilities in this regard.

It is necessary, therefore, to establish a mechanism involving standby regulatory authority for the FCC to insure that an increasingly competitive environment does not have a significant adverse impact upon the ability of the Nation's telecommunications facilities and systems to function effectively under conditions of national emergency and natural disaster. To this end, the appropriate Executive Branch agencies should be authorized to request the FCC to take the regulatory action necessary to preserve the national interest, provided that such regulatory action shall not significantly impair the achievement of the other purposes of this Act. This is not to say, of course, that carriers should be required to provide services and facilities that they would not otherwise provide at no cost to theh Government.

Congress should also clarify the Commission's authority to establish and enforce technical standards explicitly including the national defense and security and emergency preparedness as an equal objective.

Finally, the President's Section 606 emergency powers should be retained, and he should be empowered to obtain telecommunications service in time of crisis under certain specified circumstances.

The issue of international communications

Previous parts, describing legislative proposals in the context of the domestic arena, will also be applicable in the field of international telecommunications. However, there are two issues concerning international communications that should be addressed.

(*a*) *Repeal of Section 222.*—Section 222 of the Communications Act is an anachronistic restriction on the introduction of competition in the provision of international record services. It has produced rigid delineations of telecommunications services and geographical markets which have severely limited innovation and flexibility. We strongly urge Congress to repeal Section 222 and eliminate the service and market limitations imposed by that Section.

(*b*) *Make Instructional Authority Explicit.*—COMSAT acts as U. S. representative to INTELSAT subject to Presidential supervision under Section 210 (a) (4) of the COMSAT Act. However, the manner in which the President exercises that supervision, the issuance of binding instructions, is not made explicit in that Act. Congress should amend the Communications Satellite Act of 1962 so as to make explicit the authority of the President to instruct the U.S. designated entity, COMSAT, in its relationships with foreign government and international organizations, and thereby bring the provisions of Section 201(a) (4) in line with the provisions of Section 504(b) of the INMARCAT Act of 1978 where Presidential instructional authority is made explicit.

INTRODUCTION

Common carrier legislation comments and recommendations

Our Nation is at a major turning point as to domestic common carrier services. Fifteen years ago, the interstate common carrier industry was a *de facto* monopoly providing basically simple voice service—today, there is significant and growing competition. This competition has come from dramatic advances in telecommunications and data processing technologies. This has led to new firms entering the market to provide specialized data and voice services and related equipment. As one example of the change, consider terminal equipment (e.g., telephone handset; key or PBX systems). Only the traditional common carriers offered such equipment a decade ago. Today, the field is wide open to competition. The telephone line has become like the power line; any device meeting technical specifications can be attached to it.

Government policy must keep pace with these changes—must permit U. S. industry fully to develop and innovate in this dynamic market. The 1934 Act was drafted in an era when the voice telephone and the telegraph (a slow speed data service) were the total market. Terminal devices at that time were the telephone handset and the simple teletypewriter. Automated data processing services did not exist. The industry was small enough and changed slowly enough that a small independent regulatory agency, guided by general public utility regulatory principles, could be expected to maintain oversight in the public interest.

Today, however, certain provisions of the 1934 Act stand as an impediment to the delivery of information goods and services. While technology makes possible and desirable rapid introduction of goods and services in response to market demand, the consumer bears the cost of unnecessary regulation in this growing competitive marketplace. It can be argued that the Commission has sufficient flexibility under the 1934 Act to adapt its regulations and policies to today's realities, but the Commission's attempts to do so have been subject to long and disruptive court challenges which show no signs of abating. Congress can and should remedy this situation by making a limited number of straightforward changes in the present Communications Act which will provide the proper direction for the future of this industry.

This document seeks to identify the main problem areas, to describe the principal alternatives, and to set forth rough legislative language. The legislative language is not, we stress, in bill form, and indeed, there is no bill attached as such. It does, however, reflect what we believe to be sound policies and viable compromises among the many parties interested in common carrier reform.

PART 1—THE ISSUE OF COMPETITION

The Standard in the Act: Present Situation and Problem.—The only guidance given the FCC in Title II of the Act (the common carrier title) is the public interest standard. This simply tells the agency to balance all factors and do what it thinks right. Competition is thus just one more factor to be considered; it is not to be authorized for its own sake but only where the agency finds that, overall, the public interest will be served by such competition.[1] As competition came to the communications industry, it therefore faced serious challenges under this vague regulatory scheme.

Moving from a *de facto* monopoly market to a competitive market is a fundamental shift, and no firm that benefits from a governmentally regulated monopoly can be expected to give it up without a fight. Most extensions of competition to a particular submarket have thus entailed lengthy Commission and court proceedings. This process has held up the introduction of services to the public, has added significant expense and an unnecessary degree of uncertainty to investment in this industry. It has discouraged new firms from entering the market and has inhibited the growth of those new firms that accepted the challenge of competing against the established carriers. It has also encouraged the established carriers to spend valuable resources fighting competition in the regulatory and judicial arenas rather than righting it in the marketplace where the public will benefit.

The problem for Congress is thus whether it should give guidance to the agency as to the role of competition in these changed industry conditions.

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[1] See *RCA Communications, Inc.* v. *FCC*, 346 U.S. 86 (1953).

Analysis and Recommended Action:

Competition in the provision of services and equipment is an accepted fact of life in the communications industry today. While technology is *the* driving force behind competition, both the FCC (specialized services, terminal equipment) and the courts (switched voice services) have subsequently sanctioned this competition.

Competition in these markets has proven to be very much in the public interest. Innovative new services and equipment have resulted. This has benefited both business and the residential consumer. Competition is tending to drive prices for services and equipment to marginal costs—a development leading to a more efficient allocation of resources and increased benefits for consumers in competitive markets. Technology and economics may dictate, of course, that new services will not be offered simultaneously in all markets and in all areas of the country. There should be no diminution of the FCC's commitment to the universal availability of basic telecommunications services for all customers at reasonable rates. The spread of new services should also be promoted by the REA's pursuit of the parity of service objectives of the Rural Telephone Act.

Given consumer demand and technological advances, the shift to competition was inevitable and will continue. Congress should affirm it by placing in the Communications Act the policy that the Commission must support and promote competition in the communications marketplace unless it can be demonstrated in specific circumstances that competition will not succeed because there are fundamental market deficiencies (e.g., economic forces dictate that a monopoly structure will be the inevitable result of any attempted competition).

Such an affirmation of competition would further several desirable goals. It would end the *RCA* balancing test and afford competition its proper role. It would thus enable the FCC to introduce competition into the remaining interexchange telecommunications submarkets in an expeditious manner. It would assure that the competition that exists today will be continued in the future. And it will require the FCC to consider the effects on competition of its decisions in ancillary areas such as spectrum allocation policy.

Some regulation will remain necessary. However, it is important to confine regulation to that necessary (i) to achieve purposes not fully met by competition (e. g., to promote the national defense and security and emergency preparedness); or (ii) to manage the transition to the fully competitive industry environment sought by the legislation. Most significantly, as detailed within, regulation must be available to assure the continued universal availability of basic telecommunications services at reasonable rates.

Finally, it is important to note what competition means to the ability of present partnership between AT&T and the associated independent telephone companies to plan, construct and maintain a nationwide telecommunications network.[2] Together these companies provide a network service which enables any telephone subscriber in the country to call any other subscriber in another part of the country. The call traverses local facilities (either Bell's or the independents') on both ends and intercity "long distance" facilities (owned and operated by AT&T Long Lines and the Bell operating/independent companies) in the middle.

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[2] As sometimes occurs in matters of controversy, some of the key words and phrases in the common carrier debate have taken on multiple meanings. The "network planning" concept discussed in this section, for example, raises a somewhat different set of issues than does the type of "network planning" that relates to the ability of our telecommunications system to respond effectively to national emergencies or natural disasters. For a discussion of the latter set of issues, see Part 6 below.

The network partnership is not protected today against competition, and should not be insulated from competition in the new legislation. But on the other hand, there should be no impediment to the continuation of reasonable cooperative efforts by all carriers to design and implement a network. This matter could be handled in one of three ways. First, the Congress could remain silent and leave the subject to existing law, because in our view that law clearly permits such reasonable cooperative efforts. Second, the legislative history could recognize the necessity for appropriate cooperative efforts among carriers and assure that any such efforts which would be deemed legal today would be deemed legal after passage of the legislation. Third, by treatment in the legislative history or by legislation, the carriers could be explicitly allowed to meet for the purpose of designing, planning, constructing, and maintaining a nationwide telecommunications network, including developing the applicable technical standards. There would be a provision for appropriate Governmental supervision to prevent any abuses. We believe that the latter approach is unnecessary, and carries the risk of implying some new antitrust immunity—something not intended or bestowed in this approach. We would therefore opt for the second alternative, as the simplest way to deal with this matter in a fashion that leaves wholly undisturbed the present positions of the interested parties.

In the international field, a prerequisite to the introduction of additional competition is the cooperation of foreign correspondents. However, experience has indicated a reluctance on their part to, for example, initiate operating agreements with new carriers, who would provide a valuable competitive spur inthe international field. Efforts are underway, in both the Executiv Branch and at the FCC, to consult with foreign correspondents with a view toward overcoming obstacles to the introduction of competition. We believe these efforts would be significantly enhanced if a statement of Congressional support for additional competition in the international field, and efforts to achieve it, were included in the legislation or legislative history. This would simply affirm and reinforce existing policy.

PART 1—SUGGESTED LEGISLATIVE LANGUAGE

The Congress hereby declares that the purposes of this title are to assure that the people of the United States have available, at reasonable rates, domestic and international telecommunications services which are reliable, efficient and diverse, and which promote the national defense and security and emergency preparedness of the Nation, and to assure that the economy and general welfare of the Nation will benefit from the continuing improvements in telecommunications technology. In achieving such purposes, competition and the private sector shall be relied upon to the maximum extent possible to determine the availability, variety, quality, and cost of telecommunications services and facilities. Regulation shall be exercised by the Commission, in accordance with the authority established in this title, only to the extent necessary to achieve these purposes, including the continued universal availability of basic telecommunications services at reasonable rates and the management of the transition to a fully competitive industry structure anticipated by this Act.

PART 2—THE ISSUE OF DEREGULATION

Present Situation and Problem—Competition leads to a second and, in our opinion, *the* most important issue—whether there is a need for continued regulation of all interexchange common carriers. As noted, regulation has considerable costs. Fast-changing technology makes possible new services and products, but entreprenurs find themselves blocked by regulatory delays. There is a tendency to fight with lawyers rather than salesmen in the marketplace.

If a carrier had monopoly power, there would be a clear need for regulation to protect the public. But many interexchange carriers have no market dominance at all—yet are today subject to the current Act's basic regulatory requirements of entry and exit permission and rate supervision. Why is there a need to regulate the rates of MCI, SPC or resale carriers like Tymshare? If they charge too much or give up the fight, the public will simply go elsewhere. In the case of the reseller, the basic transmission may well come from a carrier like AT&T and thus be already regulated. What purpose is served by regulating the entry, exit or rates of the reseller?

The FCC, however, does insist on regulating the resale carrier as a matter of policy.[3] Even were the Commission to change the policy, there is a substantial legal issue under existing law whether the Commission can forbear from regulation when it determines that the public interest would be served thereby. There are strong arguments that the Commission has this authority today. The Communications Act's broad delegation of authority and the leeway inherent in the term "public interest" may well be sufficiently flexible to permit the FCC, upon the development of full record and with continuing oversight, to step back from regulation in particular cases.

Unfortunately, the courts are divided on this point,[4] and any Commission decision to forbear would surely be subject to an arduous appellate review. The very uncertainty associated with the Commission's authority in this area would make firms very hesitant to make decisions based upon it or undertake investments permitted by the Commission until all appellate challenges had been exhausted. Thus, it might be years before the Commission could forbear from regulating firms and activities that do not need to be regulated. This means a loss of investment and growth in the private sector and the unnecessary expenditure of taxpayers' dollars at the Commission. The only benefits will accrue to those firms that are able to use the regulatory process to impede their competitors and delay new services. The ultimate loser will be the public.

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[3] Resale and Shared Use. 60 FCC 2d 261 at (par.17) (1976). modified 62 FCC 2d 588 (1977). affirmed. sub nom. *AT&T* v. *FCC*, 572 F.2d 17 (2d Cir., 1978).

[4] See. e.g., *AT&T* v. *FCC*, supra. But see *Philadelphia Television Broadcasting Co.* v. *FCC*, F.2d 282 (D.C. Cir. 1966); *C.J. Community Services* v. *FCC*, 246 F.2d 660 (D.C. Cir. 1957); *ACLU* v. *FCC*, 523 F.2d 1344 (9th Cir. 1975).

Terminal equipment is another area for deregulation. As noted, it is now wide open to competition. When AT&T introduces new equipment like DataSpeed 40/4,[5] it is the subject of regulatory dispute and rate regulation. IBM, on the other hand, can bring forth a similar device, and earn any return the market permits. We thus have a divided house—half-regulated, half-unregulated. Those regulated are obviously at a disadvantage, facing delays and limited returns. Again, would it not be better to leave this area to the marketplace, with all entrants allowed to innovate rapidly, to take risks, and to experience large returns or losses, with no regulatory umbrella?

Analysis.—There is clearly no need to require entry, exit or rate regulation of non-dominant carriers like MCI or SPC. There is an issue as to what constitutes dominance. This might be defined along the lines of S. 611—that in determining whether a carrier faces effective competition for a particular service, the FCC is to consider the carrier's share of total revenues in that market, with the presumption of effective competition when the share is less that one-third (204(b)). Alternatively, there is the defininition in H.R. 3333—that a carrier is to be termed dominant if it furnishes service in a substantial percentage of the total number of interexchange markets and has the ability to raise prices without significantly affecting the amount of service demanded by its customers (322(b)).

The first approach has the advantage of setting forth a specific standard and thus affording greater legislative guidance. On the other hand, even though the one-third share is only a guideline or presumption, it might lead to the agency maintaining regulatory controls for a considerable period after the carrier has really lost its ability to control or dominate that market. The second approach seems, therefore, to offer desired flexibility to the agency, while soundly maintaining the focus on the most critical consideration—ability to charge prices with customers helpless to take remedial steps. In addition, this test requires no more information than is legitimately required for ratemaking purposes. We thus favor the second approach. In any event, the legislative history would make clear the obvious—that AT&T is such a dominant carrier.

Even where the carrier is dominant, this does not mean that it must be fully or rate regulated in every market. In markets other than ordinary long distance service, it may well face effective competition. Entry and rate regulation are then unnecessary[6] and indeed disserve the public interest, since they impose unneeded costs and block innovative services. The dominant carrier should be able to take risks, and earn or lose, without affecting the ratepayer in the basic long distance service. The critical issue here is to insure that the carrier does not use its dominant or monopoly position to compete unfairly in the competitive markets (called cross-subsidization—raising charges in one market in order to lower them in a competitive one).

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[5] See discussion of Consent Decree problem in next part.

[6] We stress again that there should be no entry or rate regulation of the nondominant carrier in any competitive market. However, interexchange carriers providing ordinary long distance service in partnership with a dominant carrier should be regulated as to that service. Such carriers would not be subject to entry or rate regulation or separate subsidiary requirements for their competitive services. Thus, small companies would not be required to form separate subsidiaries to provide regulated and competitive services. In addition, these carriers, particularly the small ones, can simply concur in a joint tariff filed by AT&T. As to ordinary long distance service, even that service could be fully deregulated at some future time, if the Commission found effective competitive conditions to exist.

It could be left to the Commission to determine which markets or submarkets have effective competition, without legislative guidance. On the other hand, the Congress has heard much testimony on this score, and it would be helpful to supply guidance to the FCC either in the legislation or in the legislative history. Thus, the legislation or legislative history could specify that markets now meeting the effective competition criterion include terminal equipment, resale and value added services and public message service (telegram). In addition, the Commission could be given guidance as to what factors should be taken into account in its future deliberations as to what markets or submarkets are subject to effective competition.[7]

The most difficult area concerns the specialized markets outside the ordinary long distance service. On the one hand, it is argued that AT&T has a very large share of this market, and with such a share and its "deep pockets," should not be turned loose, without full regulatory oversight of tariff filings and rate regulation.

On the other hand, it is pointed out that just as in terminal equipment where AT&T's share is very large but it faces effective and growing competition, so also these specialized services are the subject of new, fast increasing competition, much of it of a highly innovative nature (e.g., SBS; XTEN). The main problem is to assure fair competition—particularly to avoid cross-subsidization; in that sense, it is a mistake to say that AT&T is being deregulated, since it will face strict regulatory conditions concerning its manner of operation (e.g., fully separate subsidiaries, see below). The issue rather is the need for entry, exit and, particularly, rate regulation. Presumably, if AT&T's rates are too low (but with no cross-subsidization), it will face substantial losses. If AT&T lowers rates with intent to monopolize (i.e., to drive out competition and subsequently raise rates), it would have to take account of the nature of the competitors (e.g., SBS (IBM; COMSAT; Aetna) Xerox, Southern Pacific, ITT) and, in any event, the antitrust laws remain applicable. Further, the Commission has the discretion of returning to tariff/rate regulation if it finds that conditions do not constitute "effective competition" and therefore a return to such regulation is called for.

We believe that the latter arguments are persuasive, and that the Congress should opt for a market approach, with the agency having full discretion to impose the conditions necessary to insure fair competition (see below) and to take remedial steps when circumstances so require. Under this approach, the ordinary long distance telephone service provided by dominant carrier or in partnership with a dominant carrier would be the only interexchange[8] telecommunications market now deemed not subject to effective competition, and thus coming fully within the present regulatory provisions of Title II (entry, rate regulation, etc.). As to those markets where the dominant carrier faces effective competition, the regulation should take the form of accounting strictures and fully separated subsidiaries,[9] requirements for resale and interconnection, or possibly also additional limited and carefully specified regulation.

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[7] For example, in making such determinations, the Commission could be directed to consider all factors that influence the extent to which a carrier can raise its prices without significantly affecting the amount of its service that customers demand, including the availability of substitute service, geographic competition and potential competition.

[8] In Parts 4 and 5 of this paper, the terms "interexchange" and "intraexchange" are replaced by "interdistrict" and "intradistrict" for purposes of access charges. Ordinary long distance telephone service or synonymously, interexchange message toll service (MTS), means a service which permits subscribers to local exchange telephone service in separate local exchange areas to establish two-way, voice-grade telephone communications—

(A) between one another on a message-by-message basis through the use of an interexchange network and intraexchange facilities serving their respective local exchange areas; or

(B) between such subscribers and any point located in a foreign nation.

Accounting, while helpful, is not a complete answer to the cross-subsidization issue, in light of FCC experience. The fully separated subsidiary does provide very substantial protection against abuse, because with it, the separated entity must take facilities or services from its parent in the open—under tariff or arms-length contract. The subsidiary is still a part of the parent, with all that entails—full exchange between the two and full direction by the parent.

The Commission has already moved, in part, to require resale or sharing of the facilities or services of a dominant carrier like AT&T. This provides a salutary market check on the carrier deliberately underpricing its services to thwart competition. With resale or sharing, the carrier would find itself subsidizing the world, to the detriment of its main services like MTS. As to interconnection, there is an obvious need for the new competitors to be assured non-discriminatory access to the local systems.

In addition to the foregoing, the FCC could not only require one or more fully separated subsidiaries but it could allow a short period (30–60 days) for parties to protest new services or rates, with the services and rates then going into effect and subject to revision at the end of a process that must be concluded within one year (see H.R. 3333). This approach would not constitute rate deregulation since it involves challenge to tariffs and proceedings on the tariffs, however truncated. It thus involves the above described basic policy determination—whether to free the dominant carrier to compete in these markets (e.g., terminal equipment), if it employs the fully separate subsidiaries.

Alternatives.—There are thus a number of alternatives:

(i) Give the Commission explicit authority to forbear from regulation when it finds that regulation does not serve the public interest. The agency could always resume regulation, if it found that this was required by abuses or changed circumstances. At the least, this approach is required.

(ii) Require that the FCC not regulate when it finds that a carrier lacks dominant marketpower or that a dominant carrier faces effective competition in a particular market and is subject to one or both of the following:

(*a*) specified accounting; one or more fully separated subsidiaries

(*b*) other conditions imposed after a truncated process (e.g., one year) during which the services or rates are effective.

Congress could then require reports of the Commission's progress in carrying out this provision.

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[9] Any employee benefits or rights acquired prior to the formation of a separate entity would, of course, be retained after such entities are created.

Competitors would be assured fair and equitable access to all essential facilities and resale of all regulated interexchange services.

(iii) Require (ii) above, but without (*b*) and with specification of markets where the FCC must forebear from regulation, either in the legislation or legislative history. Sufficient information has been developed, both before the Commission and before Congress, to identify those areas where such forbearance is appropriate and the area requiring entry and rate, etc., regulation of dominant carriers. That area is today interexchange message toll service. The Commission would, however, be able to impose regulation in any market where it finds that effective competition does not exist.

(iv) Like (iii) above, the Commission now would regulate only ordinary long distance service (with competitors having access to essential facilities and with requirements for separate regulated and unregulated services). Unlike (iii), the Commission could not re-impose regulation if conditions so warrant, but rather would have to seek new legislation. Similarly, the law would specify the conditions applicable to fully separate subsidiaries, and while these conditions could be waived, no new ones could be imposed without revision of the Act.

We recommend (iii), preferably employing legislation rather than legislative history. The most crucial step is for Congress to clarify the issue of the agency's discretion not to regulate (see p. 10), and (i) does that in the simplest fashion (see attached for legislative language). But the area of deregulation is of great importance, and Congress should therefore give as much guidance as possible. There is, we believe, a large body of evidence indicating the soundness of proceeding without the traditional common carrier regulatory facets of entry, exit and rate oversight in areas with effective competition—in our view, currently all areas except ordinary long distance service. It follows, we believe, that Congressional guidance to this effect in both the legislation and its history would be most helpful, and should avoid the unnecessarily lengthy agency process that might result if the agency were left without direction. Finally, we think it desirable to allow the agency some flexibility to re-enter and impose regulation if conditions so warrant. We recognize that there may be some danger of unnecessary regulation of the dominant carrier, but under this approach, the agency will have to give deregulation a full and fair trial and can re-institute the regulation of the dominant carrier only if it meets the burden of establishing market failure. Given this and Congressional oversight, we believe that flexibility is warranted.

In the matter of terminal equipment deregulation, we recognize that existing carriers may have large amounts of underdepreciated terminal equipment that could raise problems in an abrupt change to a deregulatory environment. There must be a replacement of existing tariffs with a new type of contract or sale of existing equipment, and the removal of existing equipment from the basis of cost allocations for long distance settlements. We believe that the Commission now has, and should retain, full discretion to deal with this matter by adopting equitable transitional policies (i.e., allowing the telephone companies to gradually discontinue their tariffed provision of terminal equipment). Since many of those transition problems have impact on state regulatory jurisdictions, they could be handled through a joint Federal/state process. Congress may wish to affirm the Commission's discretion to afford an equitable transition period, taking into account the above factors.

Also, the Commission may require that the manufacture and distribution of any competitive terminal equipment by AT&T be done through a separate subsidiary (and in the case of Western Electric, a separate division).

PART 2: SUGGESTED LEGISLATIVE LANGUAGE

Amendment to Section

(*a*) Notwithstanding any other provision of this Title, the Commission shall not impose any regulation upon an interexchange carrier which is not found to be dominant. Provided, however, that—

(1) The Commission shall have the authority to impose access charges on interexchange carriers using local distribution facilities; and

(2) The Commission shall have authority to require standards and take any other appropriate action to promote the national defense and security and emergency preparedness as set forth in Section.

(3) Ordinary long distance service provided by interexchange carriers in partnership with a dominant carrier will be subject to regulation under this Title.

(*b*) The Commission shall classify an interexchange carrier as a dominant carrier if the Commission determines that—

(1) the carrier—

(A) furnishes telecommunications service in a substantial percentage of the total number of markets or submarkets for interexchange telecommunications services; and

(B) has the ability, in a substantial percentage of those markets or submarkets in which the carrier furnishes such services, to raise prices without significantly affecting the amount of service demanded by its customers.

(*c*) Notwithstanding any other provision of this Title, the Commission shall not impose any regulation, other than that specified in this Section, and in Section , upon any dominant carrier when engaged in particular service or class of service within a particular market that is subject to effective competition and when the dominant carrier meets the following conditions: (1) that accounting methods are used as specified by the Commission to insure that such competition is fair and not subsidized by the carrier's revenues in markets where it does not have effective competition; and (2) that a fully separated subsidiary is established as the sole means of engaging in the particular service.

Within one year of the effective date of this Act, the Commission shall implement the foregoing, and in doing so, shall find all markets to have effective competition except basic interexchange message toll service (MTS), including such features and enhancements which the Commission shall determine, as technology and public needs evolve and consistent with the goals and purposes of this Act, are to be provided as a part of such MTS. The Commission may reevaluate this finding of effective competition as to any market or submarket, and, if necessary, to achieve the goals and purposes of this Act, impose such regulatory conditions in this Title as called for in the circumstances. In making such determinations, the Commission shall consider all factors that influence the extent to which a carrier can raise its prices without significantly affecting the amount of its service that customers demand, including the availability of substitute service, geographic competition, and potential competition.

(d) "Fully separated subsidiary" or "fully separated carrier" means a subsidiary or carrier owned or controlled by, or under common ownership or control with another subsidiary or carrier which does not have more than one common director, common officers, common employees, common books, records, and accounts or financial structure, commonly owned property or facilities with such other subsidiary or carrier, and does not have any common marketing of product or services (other than the use by the regulated carrier of institutional advertising whch is not product or service specific), and which deals with such subsidiary or carrier in securing facilities or regulated services in the same manner as it deals with any unaffiliated entity or carrier. The Commission may, by rule or order, expand, waive or reduce the above conditions or specify other conditions needed to ensure fair and effective competition.

Alternative

The Commission may forbear from imposing the regulatory requirements specified in this Title, if it finds, by rule or order, that effective competition exists in a particular market. The Commission may impose conditions on the carrier's operation to insure the public interest and particularly fair and effective competition. The Commission may not impose entry, exit or rate regulation under this Title unless it finds that such regulaton is required to carry out the purposes of this Act.

Amendment to Section :[10]

(a) Dominant carriers—

(1) shall furnish ordinary long distance service [11] when a reasonable request is made for such service, and may not discriminate with respect to the rates, terms, and conditions for such service;

(2) may not establish or enforce unreasonable restrictions on the resale or sharing of interexchange telecommunications services or facilities.

(b) Every intraexchange carrier shall establish interconnection with any interexchange carrier upon reasonable request. Every intraexchange carrier shall establish connection upon reasonable request with those telecommunications facilities and systems and all terminal equipment and terminal devices owned or leased by a customer which meet such uniform, minimum, technical standards as the Commission may require. Intraexchange carriers may not unreasonably discriminate among interexchange carriers or customers with respect to the rates, terms, or conditions of interconnection.

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[10] The only new provision, not now being implemented fully by the Commission, is (a) (2), the resale provision. Other than that, this provision largely codifies existing Commission policy or authority.

[11] As stated above, other interexchange carriers providing ordinary long distance service in partnership with a dominant carrier would be subject to provisions (1) and (2).

(c) The Commission shall have the authority to specify, or to approve, the manner of interconnection between interexchange telecommunications facilities and intraexchange telecommunications facilities, and between intraexchange telecommunications facilities and those telecommunications facilities and systems and all terminal equipment and terminal devices owned or leased by a customer which meet such uniform, minimum, technical standards as the Commission may require.

(d) Any person, including a U.S. Government agency, may petition the Commission at any time to reexamine any carrier's classification as either a dominant or non-dominant carrier.

PART 3

Problems Involving AT&T: Consent Decree; Mass Media, Information Services; Relationship Between Long Lines and Bell Operating Companies; Relationships between Western Electric Company (WECo), Bell Telephone Laboratories (Bell Labs), and Bell Operating Companies; Pending Antitrust Suits.

(*a*) *Consent Decree.*—Currently, the scope of AT&T's authority to provide facilities and services with an information component is in doubt because of provisions of the 1956 Consent Decree. This Decree terminated the 1949 antitrust suit between the United States and AT&T. It enjoins AT&T from engaging in any business other than the furnishing of communications common carrier services. Common carrier services are defined as "communications services and facilities . . . the charges for which are subject to public regulation under the Communications Act of 1934, or any amendment thereof, or would be subject to such regulation if . . . furnished in interstate commerce." AT&T can, however, provide services which are "incidental to telecommunications," but this phrase has never been satisfactorily defined.

The 1956 Consent Decree was written in an era when telecommunications services and information services were clearly separate and distinct. Indeed, as recently as 1971, when the Commission issued its rules in the first Computer Inquiry, it was thought that a meaningful distinction could be drawn between communications and information services. Experience has shown that such a distinction can no longer be drawn and that, in the future, telecommunications and information technologies will continue to merge. In this environment, a telecommunications carrier that must restrict its involvement in the information market will be operating at a distinct disadvantage, and the public will be deprived of the benefits of its competition. In addition, the FCC is reluctant to preclude AT&T from offering services and equipment that have data processing components. It therefore has found that several services are subject to regulation, thus permitting AT&T to meet the conditions of the Consent Decree. But this has the effect of unnecessarily and artificially extending regulation, because these services would better be left to the competitive marketplace.

Legislation should recognize this reality and provide for it in a positive manner. In line with the discussion above, AT&T or any other dominant carrier should not be prevented from offering a telecommunications service or a service incidental to telecommunications on an unregulated basis. Such a restriction is unnecessary so long as the Commission is given ample authority to protect the public through structural or regulatory means—that is, accounting and one or more fully separated subsidiaries. See p. 15, *supra*. The Commission would have the authority to require that such a competitive subsidiary in the area of terminal equipment, not only be fully separated but also constitute a separate division or subsidiary from that providing equipment for non-competitive services.

(*b*) *Mass Media, Information Services.*—There is one exception to the above. With regard to electronic mass media, e.g., broadcasting, cable and pay cable, video newspaper/magazine publishing, and similar electronic services designed to inform the electorate on issues of public concern, we believe that AT&T should be prohibited from providing the service itself, but should be permitted to offer facilities to unaffiliated companies so that the services may be made available to the public. We take this position because diversity in mass media services enhances the flow of information to the American public. We believe that the entry of AT&T into the media market because of the size and wealth of the firm and its control over the facility infrastructure would tend to work against diversity.

We recognize that there is a problem in defining mass media services designed to inform the electorate on public issues. Thus, AT&T should not be excluded from its current activities (e.g., directory assistance or electronic substitutes therefor, weather, time or future activities related to the burgeoning information retrieval field). We would leave it to the Commission to define the terms in cases of dispute. We stress, however, that we would not want, in this remedial legislation, to recreate the very problem sought to be alleviated—the drawing of a blurring regulatory line. We believe that in so defining and limiting the prohibition on AT&T, we have not done so.

We have treated above the situation as to AT&T and cable television since the latter is a mass media service. The legislation would not otherwise deal with the issue of cable TV-telephone company cross-ownership. This would be left to the continuing jurisdiction of the Commission, which is presently re-examining the issue in areas with sparse population. We believe that this re-examination is called for and that the legislative history should make clear that telephone companies in areas with low population density should be allowed to engage in cable television services. Such service is long overdue. Therefore, either the legislation or its legislative history should call for a speedy resolution of the pending proceeding, and in no event later than one year from the date of enactment, (ie., the Commission shall issue its final decision in Docket 78-219 by   and shall accompany such decision with a report to the Congress of its action).

PART 3(a)(b)—SUGGESTED LEGISLATIVE LANGUAGE

(a) Notwithstanding the terms and conditions of any consent judgment or decree entered into before the effective date of this Act, and subject to the provisions of this section, carriers, and any companies and other business organizations affiliated with such carriers, may engage in unregulated activities which are incidental to telecommunications activities or other unregulated activities.

(b) The Commission shall require carriers, operating under such consent judgment or decree, to establish one or more wholly separate subsidiaries, pursuant to regulations established by the Commission, in accordance with provisions of ———— (prior section defining nature of fully separate subsidiary) in order to engage in unregulated activities which are incidental to telecommunications activities or other unregulated activities.

(c) A dominant carrier shall not provide electronic mass media services designed to inform the electorate on issues of public concern, but may provide facilities to suppliers of such services.

Legislative History:

Mass media services shall include broadcasting, cable or pay television, and video publishing of a newspaper or magazine. The Commission shall have the authority to determine in disputed cases what activities constitute the provision of electronic mass services designed to inform the electorate on issues of public concern; services such as directory assistance, weather and time and the burgeoning information retrieval field shall not be deemed to be the provision of mass media services for the purpose of this subsection.

PART 3

(c) *Relationship Between Long Lines and the Bell Operating Companies*

Present Situation and Problem.—Problems have arisen as to the new interstate competitors in the existing relationships for the provision of message toll service by the local operating companies (both Bell and the independents) in conjunction with the long haul operations of AT&T. If competition is to be fair, all long distance suppliers, i.e., AT&T (including its partners) and its competitors (MCI, SPCC, ITT, etc.), must be given access to local exchange facilities on a functionally equivalent basis because these facilities are today monopoly facilities. They are similar to the "essential facilities" which under antitrust law must be available to all competitors. But problems and arguments concerning unequal treatment have arisen with some frequency, requiring FCC attention to alleged abuses and consideration or initiation of remedial action.

The issue is whether and how to deal with this matter in the legislation.

Alternatives.—There are a number of alternatives:

(1) Congress could divest the long haul operations of Long Lines/Bell Operating Companies (BOCs) from AT&T. This would insure that the BOCs, as thus restructured, no longer had any incentive to favor AT&T's long haul activities over those of the other carriers, but such action would obviously constitute an extreme structural remedy. Congress has not developed a record either to support it or to oppose such a step, and we are not advocating it here.

(2) The basis network would consist of the facilities provided by Long Lines, the BOCs, and the independents. The only service

which would be offered as a joint service by the network would be MTS with certain basic enhancements, subject to full FCC regulation. (The FCC would be given the authority to decide whether an enhancement was permissible or whether such enhancement constituted a competitive offering which should be made by the subsidiary.)

(3) AT&T could be required to establish a fully separated subsidiary for its long haul (MTS) services (see, e.g., S. 611, Sec. 205(d)). This has the advantage of inhibiting possible cross-subsidization; further, experience has shown that subsidiary firms develop a more independent attitude than do divisions within the same corporation. Thus, although the subsidiary may still tend to favor its parent, its inclination to do so will be tempered. It has been argued that it is difficult to effect the separation in light of the way the AT&T has been configured, and that efforts to effect such a separation will interfere with efficient operation of the MTS network. Conversely, it has been argued that the long distance and local distribution functions are reasonably independent and could be separated not only without detriment to efficient operation, but perhaps with enhanced efficiency and profitability.

This is a most important issue which Congress may therefore desire to settle. The range for settlement is between option (2) and (3) (with (1) ruled out for Congressional consideration for the reason stated).

On the other hand, Congress might find it difficult to resolve this matter. In that event, the Congress could take note that the FCC does have the present authority to act in this field and has a number of proceedings under way where this issue could be resolved. If then the Congress were to decide to proceed in this fashion, there would be two ways to effect that decision:

(*i*) The legislation could leave the matter to the Commission to handle under its present authority. The legislative history would, of course, reflect this.

(*ii*) The legislation could require the Commission to focus on the matter and reach a decision within a specified period, with a full report to the Congress. The Commission would be directed to take action needed to insure full, effective competition and, at the same time, not unduly interfere with efficiencies of operation. That standard is not different from the present one—the public interest which requires a similar balancing of all factors. Hence, the difference between the two approaches is slight, and, as between the two, (i) appears preferable in light of its simplicity.

(*d*) *Relationships between Western Electric Company (WECo), Bell Telephone Laboratories (Bell Labs), and Bell Operating Companies. Present Situation and Problem.*—WECo manufactures various line of telecommunications equipment, ranging from simple voice terminals (handsets) to large scale toll switching and transmission systems. WECo's manufacture accounts for a substantial share of the internal Bell System market, and virtually 100% of selected product lines (e.g., toll-switching equipment). WECo's affiliation with the Bell companies it supplies and its dominance in supplying their equipment needs has raised questions (and have prompted numerous investigations at both Federal and state levels) as to whether independent equipment manufacturers are unfairly disadvantaged in their attempts to penetrate the internal Bell market.

AT&T claims that WECo's product prices are lower than the "general trade" by virtue of scale economies in manufacture and efficiencies in vertical integration. The independent manufacturers contest the WECo product price comparisons and assert that, even if there are economies of scale in manufacture, the economies are exhausted at much lower levels of market share than that which WECo presently retains. Further, many independent manufacturers and regulators (the most notable recent case being the California PUC) have expressed concern that fees from the license contracts between Bell Operating Companies and AT&T are used in part to underwrite research and development by Bell Labs which should legitimately be included in WECo's product costs. The California PUC accordingly has disallowed license contract fees from the revenue requirements calculations of Pacific Telephone Company.

In FCC Docket 19129, initiated in 1971, the Commission has opened up the critical issues stemming from the WECo and Bell Labs relationships with Bell Operating Companies. However, the Commission has not yet resolved these issues and some direction from Congress may be appropriate.

Alternatives.—There are several alternatives:

(1) Congress could order the divestiture and split-up of WECo into several manufacturing entities. Those activities of Bell Labs associated with product development would be transferred to the divested manufacturing entities; basic research activities could be retained by AT&T. Since, as we have noted before, Congress has not developed a record to support any drastic structural remedy, we do not view this as a realistic alternative.

(2) The Congress could itself, or could require the FCC to allocate, over time, increasing shares of the internal Bell equipment market to independent equipment manufacturers. Some of the major independent manufacturers have endorsed such an approach. However, whether performed by the FCC or Congress, an arbitrary distribution of market shares among suppliers will not engender the competitive dynamics that are desired in the telecommunications equipment manufacturing and supply industry. Accordingly, it is not advocated here.

(3) AT&T Operating Companies could be required to follow stringent open procurement and competitive bidding procedures for all or some substantial amount of purchased products. Further, Bell Labs activities associated with product development could be transferred to WECo. Any other cost allocation and information flows that benefit WECo relative to its competitors would be dealt with in such a manner as to remove any artificial competitive advantages accruing to WECo.

We prefer an option that would require open procurement and competitive bidding for a substantial amount of purchased products. Such action would insure a fair "crack" at the huge Bell market. It would appear to be within the Commission's current authority to implement such an option. However, the protracted history of Docket 19129 suggests strongly that there be some spur of action by the FCC. While Congress could itself provide substantive guidelines for procurement procedures which would fall to the FCC to implement within some specified period of time, it might be more appropriate, in view of the complexity of the substantive issues, for legislation or legislative history to require the Commission to reach a decision within a specified period (e.g., one year) with a full report to Congress (i.e., "the Commission shall issue its final decision in Docket No. 19129 by ----------, and shall accompany such decision with a report to the Congress of its action"). Indeed, this could be accomplished most simply by a derection from the Subcommittee to the Commission to complete action and to report within the specified period. A Congressional directive of this type would, of course, have no effect on the applicabiilty of the antitrust laws to the relationships beween WECo, Bell Labs and the Bell Operating Companies and would not imply a Congressional judgment, one way or another, on any pending litigation involving these relationships (see Part 3(e) below).

PART 3

(e) *Impact on Pending Antitrust Suits.*—We believe that the legislation should be strictly neutral as to pending antitrust suits and any future antitrust litigation. Whatever position or arguments the plaintiff or defendant had before the legislation, should remain and be unaffected. The evidence in antitrust cases should be evaluated on the merits by the courts and, if called upon to do so, the courts should fashion remedies in each case based upon all factors before them. The legislation should be explicit on this score—i.e., should reflect this strict neutrality in terms similar to those used here.

PART 3(e): SUGGESTED LEGISLATIVE LANGUAGE

(e) *Section . Effect on Applicability of Antitrust Laws.*—Nothing in these amendments adopted in the Revision to Common Carrier Provisions of the Communications Act shall be deemed in any way to affect the applicability of the antitrust laws of the United States, nor shall it be construed as expressing in any manner the sense of the Congress with regard to litigation which may be pending in which any person affected by these revisions may be a party on the date of enactment.

Legislative history

This provision means that the revisions shall be wholly neutral as to pending and future antitrust litigation and that whatever position or arguments the plaintiffs or defendants had before the legislation should remain and be unaffected. The evidence in antitrust cases should be evaluated on the merits by the courts and, if called upon to do so, the courts should fashion remedies in each case based upon all factors before them.

It also means that those network cooperative activities which are reasonable, permissible and legal under existing law would not be affected by passage of the legislation. Conversely, the public should be given Congressional assurance that those anti-competitive activities which are illegal under existing law remain illegal.

Finally, it means that antitrust laws would not be violated simply by the fact that when a particular area (e.g., private line or terminal field) was deregulated and the dominant carrier, AT&T, had a very large share of the market (as it necessarily would at the time of deregulation). Such share stemmed from a long-established *de facto* monopoly position, subject to substantial Federal and state regulation. With effective competition and absent predatory practices (against which the carrier has no defense at law, either now or under this legislative proposal), that share should decline. But in any event, the dominant carrier should be judged upon issues like intent to monopolize and practices—not by the fact of deregulation and the share of the market upon such deregulation. *United States* v. *Griffith*, 334 U.S. 100, 107 (1948) ; *United States* v. *U.S. Steel Corp.*, 251 U.S. 417, 451 (19) ; *United States* v. *Alcoa*, 148 F.2d 416 (2nd Cir. 1945) ; *Berkey Photo* v. *Eastman Kodak*, — F.2d — (19), 78–7445, 78–4448, June 25, 1979.

PART 4

The Issue of Federal/State Jurisdiction

Present Situation and Problem.—Today, telecommunications is subject to two levels of government jurisdiction. The Federal Government regulates interstate and foreign communications and state governments regulate intrastate communications. In general, these jurisdictional divisions are maintained unless the Federal authority preempts the states when Federal and state policies are in conflict. This division of jurisdiction between Federal and state regulators has always created some strains, and these strains have been increased in recent years because of the shift to a pro-competitive policy by the FCC. While the courts have repeatedly affirmed the Commission's authority and preeminence in this area, these conflicts reflect, among other things, the fact that telecommunications is increasingly becoming an interstate and international activity.

Analysis.—Local telephone service (sometimes called intraexchange or exchange area service) may be distinguished from long distance or toll service. Jurisdictional lines should reflect this distinction rather than the current Federal/state boundary which is not reflective of the way service is provided. Since long distance (interexchange) service is virtually the same whether or not it crosses state lines, redrawing the jurisdictional boundaries to avoid an arbitrary dependence on state lines in this way makes sense. Such a change would bring intrastate toll services under Federal regulation. Intercity services, whether or not they cross state boundaries, have generally been open to competition since the FCC's Specialized Common Carrier Decision.

On the other hand, local service is different and will probably continue to be largely monopoly service for the next several years. Regulation of this local service can be better carried out by state officials who are closer to local conditions and circumstances. The task of drawing the regulatory boundaries between long distance and local service need not be a difficult one. Congress could leave it to the states, subject to Federal jurisdiction and possible FCC review (see attached legislation). It could leave it to a joint Federal/state board. Whatever method is chosen, two considerations must be balanced: Enough discretion and flexibility must be built in to permit accommodation to local circumstances. On the other hand, reasonable guidelines must safeguard against inappropriate inclusion of intercity services under local jurisdiction.

This change in jurisdiction is important for another reason. Competition in long distance service is going to require adjustments or changes in the way these services pay for local origination and termination. This process, which has a direct impact on the price of local service, is today embedded in the complex process called separations and settlements. With increased competition, it is necessary to assure that competitors, too, will bear a fair share of the cost of local facilities. The most desirable solution to this problem is to treat all long distance or intercity carriers on a similar basis and charge them for their use of local facilities. This will be discussed further below, but it is clear that to do this, intrastate toll must be brought under Federal jurisdiction.

PART 4—SUGGESTED LEGISLATIVE LANGUAGE

Amendment to Section —— ——

(*a*) *Authority of Commission.*

(1) The Commission shall have authority to carry out the provisions of this Title with respect to any carrier which furnishes telecommunications service or makes available telecommunications facilities, or both, between district areas, or between a district area (or any point in a local district area) and any point located in a foreign nation.

(2) The Commission shall have the authority to regulate the origination and termination of interdistrict traffic over local distribution facilities, and to regulate the local distribution facilities of interdistrict telecommunications service networks if they are not used primarily to provide local district telephone service.

(3) The Commission shall have the authority to regulate or prescribe rates and tariffs for the origination and termination of interdistrict traffic using local distribution facilities. These rates and tariffs shall include an amount determined by the Joint Board in Section— or the Commission to be necessary to fund the National Telecommunications Pool.

(4) The Commission shall assume administration of the National Telecommunications Pool upon abolition of the Joint Board in Section -— and shall assign costs to be reflected in rates and tariffs for access. Upon such abolition, it may approve changes in boundaries of state regulatory districts.

b. Authority of State Agencies

(1) Except as otherwise provided in this Title, all regulation of intradistrict service is reserved to the states, provided, however, that no state shall have any authority to regulate the provision of terminal equipment or devices.

(2) Within one year after the effective date of this Act, state regulatory agencies shall establish boundaries for local regulatory districts. Services which both originate and terminate within such a district shall remain under state jurisdiction, except as specified under a.(2) above.

(3) Regulatory districts shall generally encompass one or more existing telephone exchanges, but shall not cross any state line, and no district which includes part or all of a standard metropolitan statistical area (SMSA) shall include part of another SMSA, except as permitted by the Joint Board in Section — (Board). Regulatory districts shall include no more than the service area of one telephone operating company unless the two or more affected companies agree to having part or all of their operating area included in the same district. The above requirement proscribing the inclusion of two SMSAs, except as permitted by the Board, must be met by such an agreement. Future changes in boundaries must be approved by the Commission or Joint Board, as appropriate. Where such changes comply with the above requirements, approval shall be deemed granted 60 days after submission, if the Commission or Board has not acted.

(4) The Commission may delegate to state regulatory agencies the authority to certify rates for the origination and termination of interdistrict traffic using local distribution facilities for carriers operating under Section 2(b)(2) of this Act. In such cases, the methodology for jurisdictional allocation of plant and operating expenses and for establishing the allowed rate of return on plant allocations to the origination or termination of interdistrict traffic shall be determined by the Joint Board and subsequently by the Commission.

(5) Nothing in this Title precludes state agencies from authorizing intradistrict service tariffs where such services are obtained by local subscribers for the purpose of originating and/or terminating traffic which may at the subscriber's option flow to or from a point of interconnection with an interdistrict carrier.

PART 5

The Issue of Access Charges

Present Situation and Problem.—Under the existing separations and settlements process, AT&T and the independent telephone companies are economic partners in the provision of interstate toll service. Costs and revenues are pooled, economic risks are shared, and all companies earn the same rate of return on investment assigned to interstate toll service. This process is administered largely by the established telephone industry which follows rules for separating costs between long distance and local services that have been formulated by a Federal/State Joint Board and accepted by the FCC. This process is known as "separations and settlements"—the former referring to the separation of plant into states and Federal regulatory jurisdiction and the latter referring to the division of revenues by phone companies to their partners.

When long distance or intercity calls originate or terminate on local facilities, current procedures require that certain local costs be assigned to the intercity service. These costs are of two kinds: traffic sensitive costs which vary with the amount of traffic carried and non-traffic sensitive costs which are essentially independent of the amount of traffic. Because non-traffic-sensitive costs are not economically attributable to use, they must be allocated on a somewhat arbitrary basis between long distance and local service. Thus, by increasing or decreasing the share of these costs which are assigned to interexchange services, the "contribution" towards local service can be increased or decreased.

Over the years, changes in these allocations procedures have increased the proportion of costs assigned to interexchange services. In part, this may have occurred because technology had driven the cost of providing long distance service down, while the cost of providing local service was rising. Thus, interexchange services were able to bear an increased share of non-traffic sensitive costs and contribute heavily to the cost of providing facilities which enable local telephone subscribers to access the local telephone network without increasing long-distance rates. However, while this process worked generally to keep down local rates, it is subject to criticism because it is done largely within the telephone industry and is not amendable to public accountability.

As competition has been introduced into the provision of interexchange services, there is increasing pressure to reevaluate these allocations. This is so because it will be necessary to price traditional long distance service more closely to the cost of providing that service in order to compete with other carriers offering alternative services. In addition, the current separations and settlements process was not designed to accommodate competitive providers of long distance service so that they too might bear a fair share of local exchange costs. Since the separations and settlements process involves only the Bell System and the independent telephone companies, it is argued that it works against balanced relationships between local telephone companies and all intercity carriers. In short, the existing separations and settlements process worked relatively well in a noncompetitive environment, but it does not now provide sufficient flexibility to be responsive to changes in the marketplace and technology. For these reasons, it has been suggested that an access charge concept be developed that would apply to all directly or indirectly connected intercity carriers in order to cover part or all of the local costs associated with the origination and termination of intercity services.

Analysis.—Underlying the access charge proposals are a number of basic issues involving the future relationships between intercity carriers and local telephone companies, the future roles of Federal and state regulatory agencies in establishing local telecommunications policy, and the economic impact of the anticipated transition toward a more competitive and less regulated market. The telephone industry argues that a separations-and-settlements-like arrangement for the established telephone companies is necessary to provide the economic incentives which encourage individual local telephone companies to act in the best interests of the overall nationwide toll network. Thus revenues are pooled and shared among the network partners, and toll investments made with the expectation by the partners of earning the overall toll rate of return and sharing market risk. Further the telephone industry believes that the collection and distribution of charges should continue to be administered within the industry and that the Government should not be involved in a role which for many years has been performed by the private sector and properly belongs there. In short, the industry argues that the present arrangement has worked and resulted in an efficient network; that it should not be disturbed or disrupted except for most compelling reasons; and that no such reasons exist, because the access charge will be equally applicable both to the competitors and the partnership (the latter as a cost going into the pool).

On the other hand, it is believed by many that unless the current division of revenue procedures are reviesd, it will not be possible to create a proper climate for free and open competition with a minimum of regulatory or judicial intervention. As long as there is any difference in treatment of local access costs for telephone partnership services versus competing carrier services, the partnership arrangements will always be viewed with suspicion by competitors and subject to litigation. For example, even if the costs for access covered by partnership toll revenues are the same as costs covered by tariff to competing carriers, since the costs are embedded in an end service rate in one case and in another in a publicly filed access charge tariff, there may be allegations of anticompetitive discrimination. Further, it is argued that all competing intercity carriers must be treated equitably and that revenues should not be divided between companies in such manner as to create artificial economic incentives encouraging a local telephone company to favor one long distance carrier over another and thereby bias customer selection of alternative long distance services or decisions by the local partners as to requests of the new competitors concerning interconnection interfaces or unique local distribution facilities for new digital services.

The other main issue in dispute involves the concern of many small telephone companies that competitive pressures combined with changes in separations and settlements procedures will result in higher rates for both local and toll services in their service areas. Many of these companies have taken the position that long distance services should not only continue to contribute to local services at the present level, but that the proportion of costs assigned to intercity services should continue to increase. Many companies also argue that it is not realistic for each telephone company to establish its own costs and set its own access charges. Instead, they advocate a uniform national access charge with each individual company recovering its own costs. These same companies recommend that a uniform nationwide rate structure be maintained.

There appears to be general agreement that some form of "safety net" should be established which would prevent disparate burdens in areas with unusually high service costs, and various mechanisms have been proposed to provide such assistance. Those who argue against continuation of a separations-and-settlement-like process, however, believe that the assistance mechanism should be more amenable to public scrutiny.

Alternatives

There is general agreement among interested parties that the existing separations and settlements system must be changed in order to accommodate the effects of competition. However, differences remain on a number of issues. The question of the need for and the degree of intercompany pooling of revenues to assure availability of basic telephone service is still a point on which there is not agreement.

We believe that it is necessary to limit intercompany pooling in order to eliminate economic inefficiencies and competitive inequity inherent in the present system. The telephone industry, on the other hand, continues to believe that the sharing of revenues provides a common economic incentive that leads to more efficient network design and operation and that without the current joint venture, investment in the overall network may not continue at the same rate.

It may be that Congress will want this determination made by the appropriate agency at the end of the three year transition period and thus on the then prevailing competitive conditions. For it can be argued that the field is so dynamic and changing that it would be best to make this judgment under more definitive circumstances, which only the future can supply. In the meantime, the present policies would continue, and plans could be made on the basis of such policies, because in any event, an equitable transition would be needed. Under this approach, for which we have set out specific statutory language, the Board would be given the authority and discretion to make future determinations on pooling after the three year transition period. The Board would be required to focus on this important matter (i.e., to give approval or disapproval for continued pooling or condition it accordingly), and, taking into account the current conditions, could adopt that action best suited to meet the Act's purposes in these conditions.

In addition, we believe that the substitution of the National Telecommunications Pool to provide direct subsidies where they are needed to deal with potential rate deaveraging or high costs in unique situations is preferable to the current system of internal "contribution" flows.

We would leave to the discretion of the Board what constitutes an undue or substantial increase in interdistrict charges because of rate deaveraging. Certainly the Board should not seek to prevent any increase, however small, but should take remedial action to offset what would otherwise be too great a change or too unreasonable a differential between rural and urban rates.

Under the formulas currently used for the separation of costs between local and intercity services, the fraction of local non-traffic-sensitive costs being assigned to intercity toll services has been increasing at a significant rate. Although some have advocated permitting this trend to continue as long as possible, there are few in the telecommunications industry who believe that even the present assignment of non-traffic-sensitive costs to intercity toll services can be sustained indefinitely in a free competitive market. Because the assignment of these costs is of vital importance to nearly all telecommunications carriers, there has been a lively debate over the question of how the assignment of local non-traffic-sensitive costs should be treated in new common carrier legislation. The available options range from measures designed to artifically sustain the status quo to measures which would mandate a substantial reduction in the local non-traffic-sensitive costs assigned to intercity traffic. We believe the ideal solution would be to allow the forces of a competitive market to determine the assignment of these costs. Absent effective competition in the local-distribution market, it is believed that this ideal can be most closely approximated by flexible regulatory control of the non-traffic-sensitive cost assignments based on a continuing assessment of the changing market conditions which are relevant to individual telephone operating companies. Therefore, we would recommend that the Board should be given the discretion to gradually reduce the assignment of local non-traffic-sensitive costs to interdistrict toll traffic as competitive conditions change.

A recent telephone industry proposal recommends a long (15 year) transition period which is apparently designed to minimize the risk of change.

This proposal relies heavily on the judgment of a Joint Federal/State Board to direct the transition. Other proposals have provided more specific statutory direction. On August 24, 1979, NITA proposed an access charge concept which builds on the previous proposals. That proposal has subsequently been revised in response to comments received by all parties and the statutory language for its implementation follows.

As an alternative to a detailed access charge plan incorporated in statutory language, Congress might simply state principles and goals of an access charge concept and give the Commission or some other body the tools for implementing such a concept. However, under any of the above alternatives, Congress must clearly and specifically address the question of jurisdictional boundaries and the need for some form of "safety net" which assures continued availability of basic telephone service for all consumers at reasonable rates.

There are a number of alternatives as to how to carry out these important transitional responsibilities:

(1) Establish a separate Transition Board under the auspices of the Commission. Its members would be appointed by the President and would be representative of Federal and state regulatory bodies and industry and consumer interest. The members of such a board would have no other duties and would be able to focus on these temporary but crucial issues of transition.

(2) Congress would establish a special Joint Board which would have decisional authority to carry out the transitional responsibilities. This approach would have the advantage of administrative ease and continuation of centralized authority within an established framework.

(3) Transitional responsibilities could be handled by FCC under its current authority. Under this approach, adequate staff and resources would have to be devoted to the resolution of issues of transition on a continuing basis.

We would favor the second (2) approach because it factors in the state interest which is vitally concerned. But whatever approach is taken, the decisional entity should have a specific mandate similar to that given in the attached statutory language,[12] with a fulltime staff and sufficient resources to focus on these crucial issues with a specified time period.

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[12] Our proposal delegates several important decisions to the Board (see page 52), including the determination of the terms and conditions for nondiscriminatory access to local facilities and the definition of the facility interfaces to serve as points for such interconnection (see page 53). With respect to the latter provision, we believe that the legislative history should make clear that the number of interface points must be sufficient to serve the purposes of the Act (e.g., the promotion of competition and the national defense and security and emergency preparedness, see pages 57–58).

PART 5—SUGGESTED LEGISLATIVE LANGUAGE

Amendment to section—.

(*a*) The Congress finds that a system of access charges for district services should be implemented in order to achieve parity of treatment among all directly or indirectly connected users of district facilities; public visability and accountability of cost assignments and division of revenues; flexibility in accommodating changes in market conditions and in technology; incentives for efficient investment decisions and technological choices; appropriate allocation of subsidies for social goals, i.e., to support the continued universal availability of basic telecommunications services at reasonable rates; and the limitation of pooling of revenues to that needed to preserve the availability of basic telephone service and reasonable access to interdistrict facilities.

(*b*) In order to accomplish these goals, the local district carriers, upon acceptance by the Commission or certification by appropriate state commission for Section 2(b)(2) carriers, shall establish non-discriminatory charges, to be effective at the beginning of the third calendar year following December 31 in the year of enactment of the Act, for telecommunications services for all persons interconnecting with the local district facilities.

Amendment to Section—.

(*a*) There shall be established a National Telecommunications Pool (NTP) for the purpose of alleviating any substantial or undue increases in interdistrict or intradistrict charges because of rate deaveraging or other failures of the market to provide essential basic telephone service at reasonable rates.

(*b*) Revenues for the NTP will derive from the Federal access charge as defined in Section —.

Amendment to Section 410.

(*a*) A special Joint Board shall be established under this Section within 90 days after enactment of the legislation, to ensure an orderly change from existing procedures to an access charge arrangement, and to ensure equitable economic treatment of telephone subscribers and competing interdistrict carriers. Board activities shall preempt any other Joint Board proceedings existing at the time of enactment.

(*b*) The special Joint Board will consist of three Commissioners of the Commission and of two State Commissioners. The Board will have authority, subject to the provisions of the Civil Service laws and other applicable statutes, to appoint such officers, engineers, accountants, attorneys, inspectors, examiners, and other employees as are necessary in the exercise of its functions. The Board shall promptly assemble a staff sufficient to carry out its responsibilities. There shall be annual reports to the Congress on the resources of the Board and its progress.

(*c*) The Board may perform any and all acts, make such rules and regulations, and issue such orders not inconsistent with the Revised Act as may be necessary in the execution of its functions, which shall include, but not be limited to, the following:

(1) Grant waivers for Standard Metropolitan Statistical Area (SMSA) or state line rules.

(2) Within 15 months of date of enactment, define facility interfaces to serve as points of interconnection for district access by interdistrict carriers and other appropriate entities, including the U.S. Government, as specified by the Commission or Joint Board.

(3) Determine terms and conditions for non-disterciminatory access for interconnection with the local district facilities.

(4) Allocate access charge revenues to the National Telecommunications Pool, and administer its distribution to fulfill the purpose set out in Section —(a).

(5) Make such changes and modifications in jurisdictional separation procedures as are necessary and appropriate for the assignment of intradistrict costs to interdistrict services.

(6) Gradually reduce, based on competitive factors, changing market conditions and technology, the relative assignment by intradistrict carriers of local non-traffic-sensitive plant costs to the origination and termination of interdistrict traffic.

(7) Three years after enactment, act on requests relating to intercompany pooling of revenues for the provision of interdistrict services and the intercompany pooling of access charge revenues. The Board shall approve, disapprove or modify such arrangements, based on its evaluation whether they are consistent with the purposes of the Act and this Section in the then prevailing circumstances. The Board or subsequently the Commission may act on its motion or the motion of an interested party to reevaluate these findings as to continued pooling, one year after an initial determination and thereafter on a continuing basis.

(*d*) The Board will be abolished at the end of the transition period of ——— years.

[Decisions of the board are final and appealable under Section 402 (a) of the Act.]

PART 6

National Defense and Security and Emergency Preparedness

Present Situation and Problem.—In discussions of the current legislative efforts to amend the Communications Act of 1934, questions have arisen about the impact of these initiatives on national defense and security and the emergency preparedness posture of the Nation. While some of these initiatives may create new problems in these areas, some problems have already appeared due to the evolving competitive environment embodied in the recent actions of the Federal Communications Commission (FCC) and the courts. A major consequence of these problems is to place a much greater planning burden on national security agencies to ensure the integrity of communications in times of stress in an increasingly competitive market. We believe that some specific legislative actions, described below, would be helpful in the future in dealing with these problems.

Analysis.—The Congress is now considering a number of amendments to foster competition and deregulation where feasible, while also protecting the existing national network from unacceptable technical or operational harm. Without some legislative safeguards, however, deregulation of some telecommunication services may not give adequate consideration to national defense to achieve an efficient allocation of private resources which will not necessarily serve our collective interests in the national defense and security and emergency preparedness.

Historically, because of the current industry structure and partially as a result of our national emergency preparedness policy, some of the major common carriers have viewed the Nation's telecommunications facilities as national resources to be protected both from natural disasters and military attack. This has resulted in some unilateral protection of facilities through employment of diverse routing and other protective measures built into the system by the telephone industry. In addition, a system management structure has evolved, tying telecommunications resources together in a manner that gives this Nation a higher assurance of effective response to the private and public telecommunications needs during periods of national emergency or natural disaster. Maintenance and improvement of this capability to respond is essential to national defense and security and emergency preparedness. Any dramatic change in the manner in which our telecommunications resources are developed, maintained and managed could result in a diminution of this capability. On the other hand, increased competition may well lead to alternative networks, and the availability of such alternatives could enhance, depending in part on the degree of cooperative management and interconnectability of such networks, the likelihood that our telecommunications system can be reconstituted in the event of a natural disaster or national emergency.

Specifically, the national security community is concerned that the total reliance on competitive forces, absent legislative safeguards, may result in the impairment of the carriers' ability to maintain a national network management structure. Carriers facing competitive pressure may not have the incentive to jointly plan for the purposes of enhancing interconnectability and route promotion of national security and emergency preparedness should be included as an objective equal to any other. In the event that the authority of the FCC to guard against significant adverse impact upon the Nation's telecommunications resources is called upon by the Executive Branch agencies, the FCC must then consider any conflict between national security and defense and emergency preparedness needs and the promotion of competition. The possibility exists that regulation that serves national defense and security and emergency preparedness needs will in fact conflict with the other purposes of this Act, particularly the promotion of competition. The Commission must recognize that imposing significant costs on all carriers can raise entry barriers and choke off competition and that imposing costs on some carriers and not others can unfairly hamper the ability of some to compete. Thus we recommend that Congress state explicitly that the Commission's regulator authority here cannot be exercised if doing so would significantly impair its promotion of the other purposes of the Act. The legislative history could emphasize that in general, the Commission's regulatory authority should be used to facilitate negotiations and planning and not as a substitute for budgetary allocations that pay for the defense and security measures that the carriers are asked to undertake. We would also recommend that the Commission undertake an ongoing study of this problem and report annually to Congress on the extent of the conflicts it finds. Any fundamental decisions about major conflicts between, for example, national security and competition, can then be made, as they should, by the Congress.

We would also urge the Congress to clarify the Commission's authority to establish and enforce technical standards, so as to include explicitly the national defense and security and emergency preparedness as an equally important objective. While we believe that the Congress ought to continue its approach of granting the Commission broad discretionary powers to balance all considerations in carrying out its mission, it is crucial that Congress clearly identify the key objectives it intends the Commission to focus upon.

In addition, we consider it important that the President have emergency powers relating to telecommunications. To this end, we believe it essential to retain the provisions now contained in Section 606 of the Communications Act. Further, we wish to ensure that the President can exercise authority to obtain telecommunications services in times of crisis, upon just compensation, should the competitive market mechanism fail to provide for the availability of the required services.

We view the above considerations as essential to the development of a complete amended Communications Act. With such provisions, the basic law will be more valuable than ever in ensuring that the important national defense and security and emergency preparedness objectives are taken into account at a realistic and reasonable level.[13]

PART 6—SUGGESTED LEGISLATIVE LANGUAGE

Add following in Purposes of Act (Section—):

> . . . whereas the Nation's domestic and international telecommunications facilities and services are vital national resources which are critical to meeting the needs of national defense and security and emergency preparedness; . . ."

New Section—:

> The Nation's domestic and international telecommunications facilities and services remain vital national resources which are critical to meeting the needs of national defense and security and emergency preparedness;

New Section—:

> In order to meet the needs of national defense and security and emergency preparedness, it is declared to be the policy of the United States that all appropriate Executive Branch agencies through appropriate planning, procurement, and regulatory activities and in cooperation with interested state authorities, shall foster the development, maintenance,

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[13] In the event that Congress addresses any international facilities planning issues, we believe they should recognize that international telecommunications are vitally important to national defense and security. Not only is the Defense Department the largest single user of leased international telecommunications, but international facilities planning decisions can also have significant impact upon the tactical and strategic communications needs of the Nation. The Administration thus believes that Defense Department representation on any international facilities planning organization would be required.

and regulation of the Nation's operating telecommunication facilities and systems to promote, where necessary, their effective functioning under conditions of national emergency or natural disaster.

The Commission, upon request of the Executive Branch agencies is also required to evaluate the need for and take any regulatory action necessary to avoid significant adverse impact upon the ability of the Nation's telecommunications facilities and systems to function effectively under conditions of national emergency or natural disaster, provided, however, that such regulatory action shall not significantly impair the achievement of the other purposes of this Act as stated in Section —.[14] Further, the Commission shall conduct an ongoing inquiry into the nature and extent of any conflict between national defense and security and emergency preparedness and the other purposes of this Act and shall report its findings annually to the Congress.

New Section —:

The Commission, upon its own initiative or upon requests of any person, carrier, or agency of the United States Government, may establish and enforce such requirements with respect to the design, manufacture, and maintenance standards for telecommunications equipment and electronic equipment, including but not limited to all terminals, switching, signaling, and transmission components of any telecommunication network, intended to be employed as a part of or to be connected with any telecommunication network as are necessary to protect such network from unacceptable technical or operational harm, to promote the national defense and security and emergency preparedness, and to foster competition in the relevant telecommunications equipment, electronics equipment, information software and information services market or markets.

The President is authorized to require any telecommunications carrier subject to this Act to provide telecommunications service to any United States Government agency whenever he determines:

(1) that the provision of such service is necessary or appropriate to promote the national defense and security or emergency preparedness;

(2) that there exists war or a threat of war, or a state of public peril or disaster or other national emergency or that the need for such service is immediate and impending and such as will not admit of delay or resort to any other source of supply; and

(3) that all other means of obtaining the required service have been exhausted.

The President shall promptly determine the amount of compensation to be paid for the provision of such service in accordance with the provision for just compensation in the Fifth Amendment to the Constitution of the United States."

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[14] The Section number for the legislative language on page 8 will be inserted here.

Definition of emergency preparedness:

> Emergency preparedness includes those planning, management, mitigation and assistance measures taken to cope with accidental, natural, man-caused or wartime emergencies or threats thereof which cause or may cause substantial injury or harm to the population or substantial damage to or loss of property.

PART 7

International

Previous parts, describing legislative proposals in the context of the domestic arena, will also be applicable in the field of international telecommunications.

Repeal of Section 222

Present Situation and Problem.—Section 222 of the Communications Act is an anachronistic restriction on the introduction of competition in the provision of international record services. It has produced rigid delineations of telecommunications services and geographical markets which have severely limited innovation and flexibility. We strongly urge Congress to repeal Section 222 and eliminate the service and market limitations imposed by that Section.

In 1943, the Western Union Telegraph Company had an opportunity to merge with the nearly-bankrupt Postal Telegraph Company, a move intended to shore up the floundering domestic telegraph industry. Congress created a statutory antitrust exemption in the form of Section 222 which allowed Western Union to acquire Postal Telegraph. Understandably, Congress was concerned that Western Union might utilize its newly obtained domestic monopoly to favor its own international operations at the expense of its competitors. To remove this danger, the merger legislation contained certain elements designed to create a clear distinction between permissible domestic and international operations. Unfortunately, technology has eroded the viability of that distinction so completely that now the legislation only serves as a barrier to the introduction of new services and as a major factor contributing to regulatory delay in the international record industry.

Furthermore, the circumstances under which Congress found the restrictive provisions of Section 222 necessary have now changed. In its recent decision in Docket No. 78–96, *Regulatory Policies Concerning the Provision of Domestic Public Message Service*, the Commission has introduced competition in the very market in which Congress permitted a monopoly. As competitive alternatives to Western Union's domestic public message service have evolved, the restrictions imposed by Section 222 have become not only detrimental to the interests of the consumer, but also unnecessary.

Analysis.—Congress could enact a simple provision repealing Section 222. This would allow the Western Union Telepgraph Company to introduce its services to international points, as well as to Hawaii, which, in an anomaly typical of Section 222, is considered an international point. It would also resolve any inconsistent legal interpretations of the international record carriers' ability to provide their services within the United States. Competition in this market, however, must be full and fair. To insure this, Western Union must be required to interconnect its domestic system with the international record carriers in a no less effective manner than currently employed and on the same basis that it interconnects with its own international operations. The Commission has ample authority under existing legislation to set the terms under which fair competition can be achieved. For example, the Commission could condition action on a Western Union application for international facilities on suitable interconnection arrangements. Further, the Commission could, even prior to the repeal of Section 222, grant the international record carriers' applications for additional gateways, thus reducing their dependence on the Western Union domestic network and establishing the basis for their entry into the "hinterland" market. We recommend that Congress provide guidance to the Commission in this area by indicating in legislative history that applications for the acquisition of facilities following the repeal of Section 222 be scrutinized to assure that full and fair competition will be achieved.

An issue has been raised concerning a moratorium or transition period in the event of Section 222 repeal. We do not believe that a legislatively mandated period is desirable. The Commission has full discretion to act in this respect and can do so on a much more informed basis in light of then prevailing competitive circumstances.

On a related point, pursuant to Commission orders stemming from its Tat-4 Decision in 1964,[15] another anachronistic dichotomy exists between "voice" and "record" services. This dichotomy, vitiated by expanding technology and increasingly difficult to regulate, limits AT&T to the provision of voice (telephone) service and limits the international record carriers to record (hard copy) services. We believe this approach is no longer warranted and that the fullest range of services will be made available if the fullest range of carriers are able to provide them. Although not requiring a legislative solution since the Commission could revise its 15 year old policy on its own motion, we believe Congress should give the Commission some guidance in this area, perhaps in legislative history. That guidance should include a statement evidencing legislative intent and the voice/record dichotomy should no longer be maintained. It should also recognize the monopoly AT&T enjoys in the overseas message telephone market and its control over the domestic network by requiring the Commission to assure full and fair competition through equitable interconnection arrangements. The Commission could thus gear the effectiveness of its action permitting AT&T entry to an appropriate time in light of competitive circumstances.

PART 7—SUGGESTED LEGISLATIVE LANGUAGE

Section 222 is hereby repealed, and the Commission shall take action to implement this repeal in a manner consistent with the purpose of this Act.

PART 8

Make Instructional Authority Explicit

Present Situation and Problem.—Congress should take this opportunity to amend the Communications Satellite Act of 1962 so as to make more explicit that the authority of the President to supervise the

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[15] 37 FCC 1151.

U.S. designated entity, COMSAT, in its relationships with foreign government and international organizations includes the issuance of binding instructions. COMSAT acts as U.S. representative to INTELSAT subject, *inter alia*, to Presidential supervision under Section 201(a)(4) of the COMSAT Act. However, the usual manner in which the President exercises that supervision, the issuance of instructions, is not made explicit in that Act. In its report to Congress on the need for "Greater Coordination and a More Effective Policy Needed for International Telecommunications Facilities" (CED–78–77), the GAO recommended an amendment of this nature to the 1962 Act to eliminate possible confusion regarding the scope of the President's authority. This recommendation was brought to the attention of the Congress as it was considering the "International Maritime Satellite Telecommunications Act," which designated COMSAT as the U.S. representative in a new international organization, INMARSAT. Congress, in turn, made the authority of the President to issue instructions to COMSAT explicit in Section 504(b) of the Act. The proposed amendment would make the provisions concerning Presidential supervision parallel in the COMSAT Act and the 1978 amendments thereto covering U.S. participation in INMARSAT.

PART 8—SUGGESTED LEGISLATIVE LANGUAGE

Recommendation.—We recommend that Congress amend Section 201(a)(4) of the COMSAT Act so as to make explicit the Presidential instructional authority and thereby bring Section 201(a)(4) in line with Section 504(b) of the INMARSAT Act.

Section 201:

(a) the President shall—

(4) exercise such supervision over, and issue such instructions to, the Corporation in connection with its relationships with foreign governments or entities or with international bodies as may be appropriate to assure that such relationships shall be consistent with the national interest and foreign policy of the United States.

PART 9

Non-Broadcast Spectrum

A provision affording the Commission greater flexibility to achieve efficient spectrum utilization in the non-broadcast spectrum area will be submitted at a later date.

PART 10

Public Participation

A provision suggesting ways of funding public participation in common carrier proceedings will be submitted.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 6121, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

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Title I—General Provisions

PURPOSES OF ACT; CREATION OF FEDERAL COMMUNICATIONS COMMISSION

Section 1. For the purpose of regulating interstate and foreign commerce in [communication by wire and radio] *telecommunications, and regulating interexchange telecommunications service*, so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide [wire and radio communication service] *telecommunications service* with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of [wire and radio communication] *telecommunications service*, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in [wire and radio communication] *telecommunications service, and with respect to interexchange telecommunications service*, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

APPLICATION OF ACT

Sec. 2. (a) The provisions of this Act shall apply to all interstate and foreign [communication by wire or radio] *telecommunications service, all interexchange telecommunications service*, and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in [such communication or] *the provision of such telecommunications service or in* such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in [wire or radio communication] *the provision of telecommunications service* or transmission in the Canal Zone, or to [wire or radio communication] *the provision of telecommunications service* or transmission wholly within the Canal Zone.

(b) Except as provided in [section 224] *sections 201, 211(a)(2), 211(a)(3), 211(a)(4), 211(c), 211(d)(3), 211(d)(4), 211(e), 216, 217, 232, 233, 234, 235, 255, and 279,* and subject to the provisions of section 301, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with [intrastate communication service by wire or radio] *intraexchange telecommunications service* of any carrier, or (2) any carrier engaged in [interstate or foreign communication] *interexchange telecommunications service or foreign communications* solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in [interstate or foreign communication] *interexchange telecommunications service or foreign communications* solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections [201 through 205] *216(f), 216(g), 217, 232, 233, 234, and 235* of this Act[, both inclusive,] shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

(c)(1) The Commission shall have authority to conduct inquiries and establish policies, rules, regulations, and requirements, applicable to permitting the entry of foreign telecommunications services and foreign telecommunications carriers into domestic United States telecommunications markets upon terms and conditions which are reciprocal with the terms and conditions under which United States telecommunications services and United States telecommunications carriers are permitted entry into—

(A) the foreign nation in which the operations of such foreign telecommunications service or such foreign telecommunications carrier are based; or

(B) the foreign nation under the laws of which such foreign telecommunications service or such foreign telecommunications carrier is established.

No other provision of this Act shall be construed to limit or otherwise restrict the authority of the Commission established in this paragraph.

(2) In carrying out its authority under paragraph (1), the Commission shall have the authority to inquire into any charge, practice, classification, requirement, or provision of a service, facility, or product by any carrier in order to determine if such charge, practice, classification, requirement, or provision of a service, facility, or product is just and reasonable, promotes the public convenience and necessity, and ensures the equitable treatment and competitive position of United States enterprises in international markets.

(3) The Commission shall adopt such rules, regulations, policies, requirements, and procedures, and may impose such restrictions upon

a foreign telecommunications carrier or a foreign telecommunications service, as it determines to be necessary or appropriate to carry out the provisions of this subsection and to carry out its determinations under this subsection.

(4)(A) In conducting any inquiry under paragraph (1), the Commission shall request and consider the views of the Secretary of State and the United States Trade Representative.

(B) The President may, not later than 45 days after any final determination of the Commission regarding the imposition of reciprocal restrictions upon a foreign telecommuncations carrier or a foreign telecommunications service, veto such final determination if the President determines that such final determination will injure the foreign policy interests of the United States.

(C) If the President decides to take any action under this paragraph, he shall publish notice of his determination, including the reasons for the determination, in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(5) For purposes of this subsection:

(A) The term "foreign telecommunications carrier" means any common carrier which is—

(i) an alien or the representative of an alien;

(ii) a foreign government or representative of a foreign government;

(iii) a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation; or

(iv) a corporation more than 20 percent of the capital stock of which is owned of record or voted by or on behalf of, an alien or the representative of an alien, a foreign government or representative of a foreign government, or a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation.

(B) The term "foreign telecommunications service" means any telecommunications service or related service provided by or through the facilities of a carrier, more than 20 percent of the revenues or profit of which accrues (or would accrue if disbursements were made) to—

(i) an alien or the representative of an alien;

(ii) a foreign government or representative of a foreign government;

(iii) a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation; or

(iv) a corporation more than 20 percent of the capital stock of which is owned of record or voted by or on behalf of, an alien or the representative of an alien, a foreign government or representative of a foreign government, or a corporation, partnership, joint venture, or other legal entity organized or established under the laws of a foreign nation.

DEFINITIONS

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

[(a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.**]**

(a) "Telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, and sound or intelligence of any nature by wire, radio, optical, or other electromagnetic systems. Such term includes radio communication or communication by radio, as defined in paragraph (b).

(b) "Radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(c) "Licensee" means the holder of a radio station license granted or continued in force under authority of this Act.

(d) "Transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(e) "Interstate communication" or "interstate transmission" means communication or transmission (1) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (2) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (3) between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (other than section **[**223**]** *278* thereof) include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(f) "Foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(g) "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

[(h) "Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.]

(h) "Common carrier" and "carrier" mean any person who provides any interexchange telecommunications service, intraexchange telecommunications service, or foreign transmission for hire. Such term does not include the shared use of telecommunications services and facilities on a nonprofit basis. Any person engaged in the provision of television or radio broadcasting services, or the provision of cable service (as defined in section 218(e)(2)), shall not be considered to be a carrier for purposes of title II of this Act, to the extent such person is so engaged in the provision of any such service, except that nothing in this paragraph shall be construed to affect any authority of any State or local government, as such authority exists on the date of the enactment of the Telecommunications Act of 1980.

(i) "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

(j) "Corporation" includes any corporation, joint-stock company, or association.

(k) "Radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(l) "Mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

(m) "Land station" means a station, other than a mobile station, used for radio communication with mobile stations.

(n) "Mobile service" means the radio-communication of service carried on between mobile stations and land stations, and by mobile stations communicating among themselves.

(o) "Broadcasting" means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(p) "Chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(q) "Amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

[(r) "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge.

[(s) "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.**]**

[(t)**]** *(r)* "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to **[**intrastate**]** *intraexchange* operations of carriers.

[(u)**]** *(s)* "Connecting carrier" means a carrier described in clause (2), (3), or (4) of section 2(b).

[(v)**]** *(t)* "State" includes the District of Columbia and the Territories and possessions.

[(w)**]** (*u*)(1) "Ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

(2) A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

(3) A cargo ship means any ship not a passenger ship.

(4) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

(5) "Nuclear ship" means a ship provided with a nuclear powerplant.

[(x)**]** (*v*) "Radiotelegraph auto alarm" on a ship of the United States subject to the provisions of part II of title III of this Act means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. "Radiotelegraph auto alarm" on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this Act or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of title III of this Act, on a foreign ship subject to such part, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreements prescribing the requirements for such apparatus.

[(y)**]** (*w*)(1) "Operator" on a ship of the United States means, for the purpose of parts II and III of title III of this Act, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

(2) "Operator" on a foreign ship means, for the purpose of part II of title III of this Act, a person holding a certificate as such of the proper class complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

[(z)**]** (*x*)(1) "Radio officer" on a ship of the United States means, for the purpose of part II of title III of this Act, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a radio officer in accordance with the Act of May 12, 1948 (46 U.S.C. 229a–h).

(2) "Radio officer" on a foreign ship means, for the purpose of part II of title III of this Act, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

[(aa)] *(y)* "Harbor" or "port" means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

[(bb)] *(z)* "Safety convention" means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

[(cc)] *(aa)* "Station license," "radio station license," or "license" means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission.

[(dd)] *(bb)* "Broadcast station," "broadcasting station," or "radio broadcast station" means a radio station equipped to engage in broadcasting as herein defined.

[(ee)] *(cc)* "Construction permit" or "permit for construction" means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

[(ff)] *(dd)* "Great Lakes Agreement" means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

(ee) "Dominant carrier", "interexchange telecommunications service", "intraexchange telecommunications service", "local exchange area", and "regulated carrier" have the meanings given them in section 202.

PROVISIONS RELATING TO THE COMMISSION

SEC. 4. (a) The Federal Communications Commission (in this Act referred to as the "Commission") shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus [for wire or radio communication] *for providing telecommunications service; in the manufacture or sale of terminal equipment or terminal devices*; in [communication by wire or radio or] *any business which provides telecommunications service*, in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in [communication by wire or radio or] *any business which provides telecommunications service*, to any company manufacturing or selling apparatus used [for communication by wire or radio] *for providing telecom* *munications service, or to any company manufacturing or selling terminal equipment or terminal devices*; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this Act, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this Act. Such commissioners shall not engage in any other business, vocation, profession, or employment. * * *

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(k) The Commission shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain—

(1) such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of [interstate and foreign wire and radio communication] *interexchange telecommunications service and foreign transmissions*, and radio transmission of energy;

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(o) For the purpose of obtaining maximum effectiveness from the use of [radio and wire communications] *telecommunications* in connection with safety of life and property, the Commission shall investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems.

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UNAUTHORIZED INTERCEPTION AND USE OF SUBSCRIPTION TELECOMMUNICATIONS

SEC. 6. (a) (1) Except as provided in paragraph (4), a person who—

(A) knowingly carries out an unauthorized interception of a subscription telecommunication; or

(B) knowingly attempts to carry out, or conspires to carry out, an unauthorized interception;

shall be liable for civil penalties under subsection (b) and shall be subject to criminal penalties under subsection (c) (1).

(2) Except as provided in paragraph (4), a person who—

(A) knowingly carries out an unauthorized interception of a subscription telecommunication; and

(B) knowingly uses the subscription telecommunication for his own commercial advantage or financial gain, or for the commercial advantage or financial gain of any other person;

shall be liable for civil penalties under subsection (b) and shall be subject to criminal penalties under subsection (c) (2).

(3) For purposes of this subsection, the interception of a subscription telecommunication by any person shall not be considered an unauthorized interception if—

(A) such person is the originator of the subscription telecommunication, or his agent;

(B) such person has agreed to pay a fee or charge to the person originating the subscription telecommunication, or his agent, for the use of the subscription telecommunication;

(C) such person has entered into any other contractual arrangement or any other agreement under which such person is entitled

to receive the subscription telecommunication from the person originating the subscription telecommunication, or his agent; or

(D) such person has reasonable cause to believe that such person is entitled to receive the subscription telecommunication from the person originating the subscription telecommunication, or his agent.

(4) The manufacture, shipment in commerce, distribution, sale, lease, or demonstration for sale of a satellite earth station shall not by itself constitute a violation of this section.

(5) The provisions of paragraph (1) and paragraph (2) shall not apply to any interception which is authorized under chapter 119 of title 18, United States Code.

(b)(1)(A) Except as provided in subparagraph (B), any person who is aggrieved by any violation of subsection (a) may commence a civil action for actual damages, for damages under paragraph (2), and for equitable relief against the person who is alleged to have committed the violation.

(B) No civil action may be commenced under subparagraph (A) after the end of the 2-year period following the date of the discovery of the alleged violation, or the 7-year period following the date of the occurrence of the alleged violation, whichever occurs first.

(2) Any person who violates subsection (a) shall be liable to any aggrieved person for damages in the amount of $100 per day for each day in which the violation occurs, except that any damages awarded under this paragraph shall not be more than $1,000.

(3) In any civil action under this subsection in which the court determines that the plaintiff substantially has prevailed, the court may assess against the defendant reasonable attorney fees and other costs of litigation reasonably incurred.

(4) Any civil action under this subsection may be commenced in any United States district court of competent jurisdiction, without regard to the amount in controversy, or in any other court of competent jurisdiction.

(c)(1) Any person who violates subsection (a)(1) shall be fined not more than $25,000, or imprisoned for not more than 1 year, or both.

(2) Any person (other than an individual) who violates subsection (a)(2) shall be fined not more than $1,000,000. Any individual who violates subsection (a)(2) shall be fined not more than $250,000, or imprisoned for not more than 18 months, or both. If the conviction is for a violation committed after the first conviction of the individual under this paragraph, the individual shall be fined not more than $250,000, or imprisoned for not more than 40 months, or both.

(d) The penalties established in this section shall be in lieu of any penalties established in any other provision of this Act.

(e) For purposes of this section:

(1) The term "basic telecommunications service" has the meaning given it in section 202(2).

(2) The term "decoding device" means any apparatus the sole design and function of which are to make intelligible subscription telecommunications which intentionally are modified, altered, or changed by the person originating such subscription telecommunications to make them unintelligible.

(3) The term "interception" means the receipt of any subscription telecommunication provided by or through the facilities of a carrier.

(4) The term "satellite earth station" means any apparatus (or any component part of an apparatus), except any decoding device, designed to receive telecommunications from a transmitter or transmitter relay located in planetary or solar orbit.

(5) The term "subscription telecommunication" means any telecommunication, other than basic telecommunications service, which is intended for receipt in intelligible form only by a person who has agreed to pay a fee or charge to the person originating the telecommunication, or his agent, or any other telecommunication incident to such telecommunication.

TITLE II—COMMON CARRIERS

[SERVICE AND CHARGES]

DECLARATION OF PURPOSES

SEC. 201. (a) The Congress hereby declares that it is the purpose of this title—

(1) to assure that all the people of the Nation have available, at reasonable and affordable rates, telecommunications services, facilities, and products which are reliable, efficient, and diverse, and which promote the national defense and security and the emergency preparedness of the Nation; and

(2) to assure that the people, economy, and general welfare of the Nation will benefit from continuing improvements in telecommunications technology.

(b) In achieving the purposes specified in this section, competition and the private sector shall be relied upon to the maximum extent possible to determine the availability, variety, quality, and cost of domestic telecommunications services, facilities, and products. The Commission shall exercise regulatory authority, in accordance with the provisions of this title, only to the extent necessary—

(1) to achieve such purposes;

(2) to assure that residential customers and persons residing in rural areas have access to telecommunications service at reasonable and affordable rates;

(3) to foster a competitive environment;

(4) to ensure the continued vitality of United States telecommunications enterprises and products in international markets; and

(5) to carry out the transition to a fully competitive communications industry in accordance with the provisions of this Act.

(c) In furtherance of the purposes specified in this section, and in accordance with the provisions of this Act, the Commission, and each State commission, shall have authority to take such action as may be necessary to assure that the costs of the competitive activities of dominant carriers (including affiliated organizations and fully separated subsidiaries of dominant carriers) and other carriers are not borne by the users of noncompetitive services or facilities of such carriers.

(d) In furtherance of the purposes specified in this section, neither the Commission, nor any State commission, shall have any authority to take into account revenues derived from activities which are not subject to the regulatory authority of the Commission under this title, or to the regulatory authority of any State commission, in connection with determinations made by the Commission, or by any State commission, relating to rates which may be charged by carriers, or allowable rates of return for carriers, for the provision of telecommunications services which are subject to such regulatory authority, except that, subject to the provisions of section 231(e)(7), any State commission (if such State commission was engaged in such practice as of June 1, 1980) may take into account for ratemaking purposes revenues derived from printed directory advertising and from other sources customarily used in carrier ratemaking (other than terminal equipment and terminal devices).

DEFINITIONS

SEC. 202. For purposes of this title:

(1) The term "affiliated organization", when used with reference to a dominant carrier, when used with reference to any interexchange carrier (for purposes of section 213(b)), and when used with reference to any regulated carrier (for purposes of section 254(a)), means any company or other business organization affiliated with such carrier, and any subsidiary or other entity of such carrier (other than a fully separated subsidiary and other than any subsidiary or other entity specified in paragraph (3)(B)).

(2) The term "basic telecommunications service" means that basic two-way switched voice telephone service which is provided as an interexchange telecommunications service or an intraexchange telecommunications service on the date of the enactment of the Telecommunications Act of 1980 and which is provided on a universal basis to the general public. Such term includes any other interexchange telecommunications service or intraexchange telecommunications service which the Commission, from time to time, determines by rule is recognized as an essential part of an efficient nationwide system of basic telecommunications.

(3) The term "dominant carrier" means any interexchange carrier classified as a dominant carrier by the Commission under section 213(a). Such term includes—

(A) any person who owns or controls such carrier; and

(B) any subsidiary or other entity of such carrier or such person (other than any fully separated subsidiary), to the extent that any such subsidiary or other entity provides interexchange telecommunications service or intraexchange telecommunications service.

(4) The term "fully separated subsidiary" means any fully separated subsidiary established by a dominant carrier or by any other regulated carrier under section 214(a)(2)(A), or by a dominant carrier or any affiliated organization under section 214(a)(3)(A)(ii) or under section 218(b)(1)(B).

(5) The term "interconnection" means any connection established between a carrier and the equipment or facilities of any customer of such carrier, or between 2 or more carriers, for the purpose of facilitating the transmission or retransmission of telecommunications.

(6) The term "interexchange carrier" means any carrier which provides interexchange telecommunications service to the public.

(7) The term "interexchange telecommunications service" means the provision by a carrier of telecommunications service between local exchange areas. Such term includes the local distribution of interexchange telecommunications service by any means (including telecommunications facilities furnished by intraexchange carriers).

(8) The term "international carrier" means—

(A) any carrier which is engaged solely in providing telecommunications service between 1 or more local exchange areas and any point in a foreign nation; and

(B) any carrier which provides telecommunications service specified in subparagraph (A) and also provides other telecommunications service, except that such carrier shall be considered to be an international carrier only to the extent such carrier provides telecommunications service specified in subparagraph (A).

(9) The term "intraexchange carrier" means any carrier which provides intraexchange telecommunications service to the public.

(10) The term "intraexchange telecommunications service" means the provision of telecommunications service by a carrier between points within a single local exchange area.

(11) The term "local exchange area" means any geographical service area designated as a local exchange area by a State commission (or by the transitional joint board) in accordance with section 211(d)(2).

(12) The term "National Telecommunications Pool" means the National Telecommunications Pool established in section 233(d)(1).

(13) The term "private telecommunications system" means a private network or facility utilized by any person (other than a carrier) solely for the provision of any telecommunications service.

(14) The term "regulated carrier" means—

(A) any intraexchange carrier which is subject to the regulatory authority of the Commission under section 211(a)(3);

(B) any interexchange carrier which is subject to the regulatory authority of the Commission under section 212(a)(3), section 212(a)(4), section 212(a)(5), or section 214(b); and

(C) except for purposes of section 216(a)(3), any international carrier.

(15) The term "service, facility, or product incidental to telecommunications" includes, but is not limited to, data processing and information services (other than any mass media service or mass media product), data processing equipment, computer software, and terminal equipment or terminal devices. Such term also

includes any service, facility, or product designated by the Commission in accordance with section 211(a)(8). For purposes of this paragraph, the term "mass media" has the meaning given it in section 218(e)(3).

(16) The term "standard metropolitan statistical area" means the area in and around a city of 50,000 inhabitants or more, as defined by the Secretary of Commerce.

(17) The term "telecommunications service" means a service which provides for the transmission or retransmission of telecommunications and which may perform circuit or message switching, network control and routing, and internal network signal processing functions related to such switching, control, and routing. Such term does not include the provision of terminal equipment or terminal devices.

(18) The term "transitional joint board" means the transitional joint board established under section 231(a).

PART A—REGULATORY AUTHORITY OF COMMISSION

SCOPE OF REGULATORY AUTHORITY OF COMMISSION

SEC. 211. (a) The Commission—

(1) shall have authority to carry out the provisions of this title with respect to—

(A) any carrier which furnishes telecommunications services or makes available telecommunications facilities, or both, between local exchange areas; and

(B) any dominant carrier, and any affiliated organization or fully separated subsidiary of a dominant carrier;

(2) shall have authority to establish and administer rules and regulations applicable to—

(A) the rates, terms, and conditions for the use of intraexchange telecommunications services and facilities by interexchange carriers and other customers; and

(B) the facilities of intraexchange carriers, if such facilities are used as part of any network for the provision of interexchange telecommunications service and are not used primarily for the provision of intraexchange telecommunications service, except that nothing in this subparagraph shall be construed to authorize the Commission to establish rates for intraexchange telecommunications service;

(3) subject to the provisions of subsection (e), shall provide for the regulation of the provision of basic telecommunications service by any intraexchange carrier in order to assure that any such carrier furnishes such service at reasonable and affordable rates if a reasonable request is made for such service and that such carrier does not discriminate with respect to the rates, terms, and conditions for such service;

(4) shall review and shall approve, disapprove, or modify requests for the pooling of revenues by interexchange carriers or intraexchange carriers in accordance with subsection (c);

(5) subject to the provisions of section 252(b)(4), shall exercise all the powers, and discharge all the responsibilities, of the

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transitional joint board, upon the termination of the transitional joint board in accordance with section 231(i);

(6) shall not have any authority to regulate the provision of terminal equipment or terminal devices—

(A) except to the extent necessary to carry out the functions of the Commission under section 201(c), section 214(a), section 214(c), section 216(b)(2)(B), section 216(d)(3)(B), section 218, section 219, section 231(a)(3), section 233(b)(5), and section 254; and

(B) except that the Commission shall have authority to establish by rule (in accordance with subsection (g)) uniform, minimum, technical standards applicable to interconnection of the telecommunications facilities of any carrier with any terminal equipment or terminal device which is owned or leased by a customer of such carrier, for the purpose of ensuring the fostering of a competitive environment and for the purpose of ensuring that any such terminal equipment or terminal device will not cause—

(i) electrical hazards to personnel of the carrier involved;

(ii) damage to the equipment or facilities of such carrier;

(iii) any malfunction of the billing equipment of such carrier; or

(iv) any degradation of service to other customers of such carrier;

(7) shall not have any authority to regulate the acquisition, processing, or marketing of information or any other data processing service or product, including any remote access data processing service which uses telecommunications in the provision of such service, other than to the extent such regulation may be required under section 201(c), section 214, section 218, section 219, section 233(b)(5), or section 254; and

(8) shall have authority to determine in disputed cases whether any service, facility, or product is incidental to telecommunications.

(b) The Commission, in establishing or approving rates under subsection (a)(2)(A), shall be bound by the formula established and maintained by the transitional joint board under section 231(c)(3) for purposes of ensuring the availability of the amount of funds necessary for the operation of the National Telecommunications Pool.

(c)(1) Beginning on the date schedules of fees take effect under section 233(c)(3)(A), the Commission shall review, and shall approve, disapprove, or modify, any request submitted to the Commission—

(A) by interexchange carriers for the pooling of net revenues associated solely with the provision of interexchange telecommunications service (after the payment of intraexchange access fees), except that no request may be made for the joint pooling of revenues associated with—

(i) the provision of basic telecommunications service and other types of interexchange telecommunications service; or

(ii) the provision of interexchange telecommunications service which is subject to the regulatory authority of the

Commission under this title or to the regulatory authority of any State commission, and interexchange telecommunications service which is not subject to such regulation; or

(B) by intraexchange carriers for the pooling of revenues derived from intraexchange access fees under section 233.

(2) The Commission shall approve any request submitted under paragraph (1) if the Commission determines that the pooling of revenues proposed in such request—

(A) is necessary to maintain the availability of basic telecommunications service or to maintain reasonable and affordable access to facilities for the provision of interexchange telecommunications service;

(B) in the case of a request submitted under paragraph (1) (A), is necessary to defray those costs of providing interexchange telecommunications service which are not addressed in the establishment of intraexchange access fees under section 233;

(C) is consistent with the purposes of this Act; and

(D) is justified by circumstances prevailing at the time such request is submitted to the Commission.

(3) The Commission, acting upon its own motion or upon the request of any person, shall have authority to review and modify any determination made by the Commission under this subsection at any time after the end of the 1-year period following the date of such determination.

(d)(1) Except as otherwise provided in this title, all regulation of intraexchange telecommunications service provided by carriers is reserved to the States, except that no State shall have any authority—

(A) to regulate the provision of terminal equipment or terminal devices (other than to the extent such regulation may be required under section 201(c), section 219, section 231(a)(3), or section 233(b)(5); or

(B) to regulate the acquisition, processing, or marketing of information or any other data processing service or product, including any remote access data processing service which uses telecommunications in the provision of such service, other than to the extent such regulation may be required under section 201(c), section 214, section 218, section 219, section 233(b)(5), or section 254.

(2) Not later than 1 year after the date of the enactment of the Telecommunications Act of 1980, the State commission of each State shall establish boundaries for local exchange areas in such State. In any case in which a State commission fails to establish such boundaries before the end of such 1-year period, the transitional joint board shall have authority to establish such boundaries. Subject to the authority of the Commission under this title, the State shall exercise exclusive regulatory authority with respect to any telecommunications service provided by a carrier to the extent such service originates and terminates in any such local exchange area.

(3)(A) Subject to subparagraph (B)—

(i) the boundaries of any local exchange area shall be located entirely within 1 State; and

(ii) no local exchange area which includes part or all of 1 standard metropolitan statistical area may include any part of any other standard metropolitan statistical area.

(B) The transitional joint board shall have authority to make minor modifications in the requirements established in subparagraph (A) if any such modification is necessary to carry out the purposes of this Act.

(4) A State commission may not make a change in the boundaries of any local exchange area unless such change is approved by the transitional joint board. In any case in which any such change proposed by a State commission is consistent with the requirements of this subsection, such change shall be considered to be approved by the transitional joint board if the transitional joint board fails to take any action with respect to such proposed change before the end of the 60-day period following the submission of such proposed change to the transitional joint board.

(5) The Commission shall have the authority to delegate to State commissions the authority to certify intraexchange access fees for the use of intraexchange telecommunications services or facilities by interexchange carriers and other customers. In any case in which the Commission makes such a delegation, the transitional joint board shall establish, and each State commission shall comply with, rules and procedures applicable to—

(A) the jurisdictional allocation of plant and operating expenses; and

(B) the allowable rate of return for plant allocations to the origination and termination of interexchange telecommunications service.

(6) In any case in which charges for the use of the facilities of intraexchange carriers are imposed on a usage basis, the provisions of this title shall not be construed to restrict the authority of State commissions to include in such charges any use of the intraexchange telecommunications services or facilities involved which, at the option of the subscriber involved, originates or terminates interexchange telecommunications service. Such charges shall not discriminate between the use of such facilities for interexchange telecommunications service and intraexchange telecommunications service.

(e) In any case in which the Commission exercises its authority to provide for the regulation of the provision of basic telecommunications service by any intraexchange carrier under subsection (a)(3), such authority of the Commission shall be limited to the regulation of the provision of such service. The provisions of subsection (a)(3) shall not be construed to establish any authority under which the Commission may regulate any service provided by such carrier other than basic telecommunications service.

(f) The Commission shall not have any authority to include in any license issued by the Commission under title III any term or condition which is inconsistent with any limitation imposed upon the regulatory authority of the Commission in this title.

(g) The Commission, in exercising its authority under subsection (a)(6)(B), shall, to the extent consistent with the public convenience

and necessity, and taking into account continuing technological innovation, consider technical standards adopted by appropriate international standards organizations.

REGULATION OF INTEREXCHANGE CARRIERS

SEC. 212. (a) Notwithstanding any other provision of this title, no interexchange carrier, other than any carrier classified as a dominant carrier by the Commission and any other regulated carrier (other than a regulated carrier specified in section 202(14)(A)), shall be subject to any regulatory authority of the Commission under this title, except that the Commission—

(1) shall have authority to require the payment of an intraexchange access fee by any interexchange carrier in accordance with section 233 for interconnection with the facilities of any intraexchange carrier;

(2) shall have authority to establish standards, and take other appropriate action, to promote the national defense and security and the emergency preparedness of the Nation;

(3) subject to the provisions of subsection (b), shall require, and provide for the regulation of, the provision of basic telecommunications service by any interexchange carrier in order to assure that any such carrier furnishes such service at reasonable and affordable rates if a reasonable request is made for such service and that such carrier does not discriminate with respect to the rates, terms, and conditions for such service;

(4) shall have authority to regulate any telecommunications service (which is subject to the regulatory authority of the Commission under this title) which is offered by any interexchange carrier in direct association with a dominant carrier; and

(5) subject to the provisions of section 215(a)(3), shall have authority to regulate any interexchange carrier (other than any interexchange carrier subject to the regulatory authority of the Commission under paragraph (3) or paragraph (4)) to the extent that such carrier is offering any service which—

(A) is defined as an interexchange telecommunications service under this Act, as amended by the Telecommunications Act of 1980; and

(B)(i) is regulated by any State commission, but is not also provided by such carrier under tariff on file with the Commission, on the day before the date of the enactment of the Telecommunications Act of 1980; or

(ii) is provided under tariff on file with the Commission on the day before the date of the enactment of the Telecommunications Act of 1980.

(b) In any case in which the Commission exercises its authority to provide for the regulation of the provision of basic telecommunications service by any interexchange carrier under subsection (a)(3), such authority of the Commission shall be limited to the regulation of the provision of such service. The provisions of subsection (a)(3) shall not be construed to establish any authority under which the Commission may regulate any service provided by such carrier other than basic telecommunications service.

CLASSIFICATION OF CARRIERS

SEC. 213. (a) The Commission, in accordance with the provisions of subsection (b), shall classify interexchange carriers according to whether each such carrier is a dominant carrier.

(b) The Commission shall classify an interexchange carrier as a dominant carrier if the Commission determines that such interexchange carrier (through its own activities and through joint activities with any affiliated organization and any fully separated subsidiary of such carrier)—

(1) furnishes telecommunications services or facilities in a substantial percentage of the total number of markets or submarkets for telecommunications services or facilities; and

(2) has the ability, in a substantial percentage of such markets or submarkets, to raise or lower prices for such services (or for the use of such facilities) without significantly affecting the extent to which its customers rely upon its services or facilities, as a result of the absence of comparable alternative services or facilities offered by unaffiliated persons in such markets or submarkets.

(c) Any person, including any Federal agency, may request the Commission to initiate proceedings for the classification of any interexchange carrier under subsection (a), and may petition the Commission to review the classification of any interexchange carrier made by the Commission under subsection (a).

DEREGULATION OF CERTAIN SERVICE OFFERINGS; SEPARATE SUBSIDIARY REQUIREMENTS

SEC. 214. (a)(1) No dominant carrier shall be subject to any regulatory authority of the Commission under this title—

(A) other than any authority exercised by the Commission under this title which is applicable to all carriers;

(B) other than any authority of the Commission under this title which is applicable to fully separated subsidiaries; and

(C) except as otherwise provided in this title;

in connection with the offering by such dominant carrier of any telecommunications service or class of telecommunications services (other than basic telecommunications service) in a particular market or submarket if such dominant carrier complies with the provisions of paragraph (2).

(2) A dominant carrier may offer any telecommunications service or class of telecommunications services (other than basic telecommunications service) in a particular market or submarket under paragraph (1) if such dominant carrier—

(A) establishes 1 or more fully separated subsidiaries in accordance with this section and section 219 to offer such service or class of services in such market or submarket; and

(B) utilizes, in connection with the offering of such service or class of services, a cost accounting system which carries out the requirements established in section 219(d) by ensuring that the costs of any such fully separated subsidiary which relate to the offering of such service or class of services (including any such costs which are incurred before the date of the enactment of

the Telecommunications Act of 1980) are not subsidized by revenues of such dominant carrier from the provision of telecommunications services, facilities, or products which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission.

(3)(A) In the case of any telecommunications service, facility, or product, or any service, facility, or product incidental to telecommunications, which a dominant carrier or any affiliated organization may provide in accordance with section 218, if such dominant carrier or affiliated organization ceases to be subject to the applicable terms and conditions of any consent judgment or decree specified in section 218(a) which are affected by the provisions of section 218, then such dominant carrier and any affiliated organization shall engage in the offering of such service, facility, or product only—

(i) in a manner which complies with the requirements of paragraph (2)(B); and

(ii) through the establishment of 1 or more fully separated subsidiaries in accordance with this section and section 219.

(B) The offering of any such service, facility, or product shall not be subject to any other regulatory authority of the Commission under this title or to the regulatory authority of any State commission, except that such offering shall be subject to—

(i) that regulatory authority of the Commission which is applicable to all carriers; and

(ii) the requirements applicable to fully separated subsidiaries.

(4) Upon the establishment by the Commission of the system of accounting methods, procedures, and techniques which is required in section 254, the requirements of paragraph (2)(B) shall be met only through the maintenance of such system by the dominant carrier and any affiliated organization involved (or by any other interexchange carrier, in the case of an assertion by the Commission of its regulatory authority under subsection (b)(1) with respect to such carrier).

(b)(1) In any case in which any amendment made to this Act by the Telecommunications Act of 1980, or any action taken by the Commission under this title, has the effect of eliminating any regulatory authority of the Commission under this title with respect to the offering of any telecommunications service or facility, or any class of telecommunications services or facilities, in a particular market or submarket by any carrier, the Commission shall have authority to assert such regulatory authority through the imposition of rules and requirements applicable to any dominant carrier or any other interexchange carrier with respect to the continued offering of such service or facility, or such class of services or facilities, in such market or submarket if the Commission determines that—

(A) effective competition does not or will not exist in such market or submarket; or

(B) the imposition of such rules and requirements by the Commission is necessary to serve the public convenience and necessity.

(2) In any case in which the Commission asserts its regulatory authority through the imposition of rules and requirements upon any interexchange carrier (other than a dominant carrier) under paragraph (1), the Commission shall have authority to apply any of the

requirements and other provisions of this title which specifically apply to dominant carriers to such interexchange carrier, to the extent necessary to carry out the purposes of this subsection.

(3) The Commission may act under paragraph (1) upon its own motion or upon the motion of any person. Any such action by the Commission may be taken only after notice and opportunity for a hearing. In any proceeding under paragraph (1), the burden of proof with respect to the findings required in subparagraph (A) and subparagraph (B) of paragraph (1) shall be upon the Commission, or upon the petitioner in such proceeding in any case in which the Commission is acting upon the motion of such petitioner.

(4)(A) The Commission may exercise the authority specified in paragraph (1), without making the determinations required in paragraph (1), with respect to the continued offering of any telecommunications service or facility, or any class of telecommunications services or facilities, in a particular market or submarket by any carrier, after notice and opportunity for an informal hearing, if the Commission determines that—

(i)(I) there is an imminent risk that such service or facility, or such class of services or facilities, will cease to be available in such market or submarket; or

(II) there is reasonable cause to believe that, as the result of any violation of this Act committed by a fully separated subsidiary, there is an imminent risk that a carrier will not be able to continue to engage in the offering of such service or facility, or such class of services or facilities, in such market or submarket; and

(ii) any such risk will be reduced or eliminated by the exercise of such authority by the Commission.

(B) In any proceeding to review any action taken by the Commission under paragraph (1) which is based upon a determination made by the Commission under subparagraph (A), the provisions of section 706(2)(E) of title 5, United States Code, shall apply.

(C) If the Commission exercises the authority specified in paragraph (1), after making a determination under subparagraph (A), then the Commission may exercise such authority for a period of not more than 1 year after the date on which such determination becomes final.

(c)(1) For purposes of this section and section 218, a subsidiary of a dominant carrier or of any affiliated organization shall be considered to be a fully separated subsidiary if such dominant carrier or affiliated organization complies with the requirements established in section 219 and if such subsidiary—

(A) is owned or controlled by, or under common ownership or control with, such dominant carrier or any affiliated organization;

(B) does not have more than 1 member of the board of directors of such subsidiary who also is a member of the board of directors of such dominant carrier or any affiliated organization, or who also is an officer or employee of such dominant carrier or any affiliated organization, and does not have any officers or employees who also serve as officers or employees of such dominant carrier or any affiliated organization;

(C) does not have less than 5 members serving on the board of directors of such subsidiary;

(D)(i) maintains books, records, and accounts which are separate from books, records, and accounts maintained by such dominant carrier or any affiliated organization, and which identify any conduct of business specified in section 219(a)(1) with such dominant carrier and any affiliated organization; and

(ii) in any case in which such subsidiary is not a publicly held corporation, prepares financial statements in a manner which is consistent with Federal financial reporting requirements applicable to publicly held corporations, except that the provisions of this clause shall not be construed (I) to subject such subsidiary to any filing requirements which are applicable to publicly held corporations under such Federal financial reporting requirements; or (II) to affect the manner in which such subsidiary is permitted to file returns for Federal income tax purposes;

(E) does not have a financial structure in common with such dominant carrier or any affiliated organization;

(F) does not own any facilities or other property in common with such dominant carrier or any affiliated organization; and

(G) consistent with the provisions of section 219, carries out directly (or through unaffiliated persons or any other fully separated subsidiary) its own marketing, sales, maintenance, operations, manufacturing, development, and applied research relating to services, facilities, and products offered by such subsidiary, except that any institutional advertising carried out by such dominant carrier or any affiliated organization which is not specifically related to any service, facility, or product shall not be considered to be marketing carried out in common with the fully separated subsidiary.

(2)(A) Except as provided in subparagraph (B) and subparagraph (D), if the Commission determines that—

(i) any fully separated subsidiary fails to comply with any requirement established in paragraph (1) or in section 219;

(ii) the dominant carrier involved fails to comply with any requirement established in section 219, and such failure to comply affects the activities of such fully separated subsidiary; or

(iii) such dominant carrier, or any affiliated organization, conducts business with such fully separated subsidiary in a manner which violates section 219;

then the Commission (in addition to exercising any other remedial authority available to the Commission under this Act) may provide that any offering by such fully separated subsidiary of any telecommunications service, facility, or product, or any class of telecommunications services, facilities, or products, shall be subject to the regulatory authority of the Commission under this title.

(B) If—

(i) any failure of a fully separated subsidiary to comply with any requirement established in paragraph (1) or in section 219 relates only to the offering of a specific telecommunications service, facility, or product, or a specific class of telecommunications services, facilities, or products;

(ii) any failure of the dominant carrier involved to comply with any requirement established in section 219, which affects the activities of such fully separated subsidiary, relates only to the offering of a specific telecommunications service, facility, or product, or a specific class of telecommunications services, facilities, or products; or

(iii) the Commission determines that a dominant carrier or any affiliated organization fails to comply with the requirements of section 219 with respect to the offering of a specific telecommunications service, facility, or product, or a specific class of telecommunications services, facilities, or products;

then the Commission (in addition to exercising any other remedial authority available to the Commission under this Act) may provide that any offering by such fully separated subsidiary of the specific telecommunications service, facility, or product, or the specific class of telecommunications services, facilities, or products, shall be subject to the regulatory authority of the Commission under this title.

(C) Any offering by a fully separated subsidiary which is made subject to the regulatory authority of the Commission pursuant to a determination made by the Commission under this paragraph shall continue to be subject to such regulatory authority until the Commission determines that there no longer exists a failure to comply with any requirement established in paragraph (1) or in section 219.

(D) In any case in which a fully separated subsidiary offers any service, facility, or product incidental to telecommunications and—

(i) such fully separated subsidiary fails to comply with any requirement established in paragraph (1) or in section 219;

(ii) the dominant carrier involved fails to comply with any requirement established in section 219, and such failure to comply affects the activities of such fully separated subsidiary; or

(iii) such dominant carrier, or any affiliated organization, conducts business with such fully separated subsidiary in a manner which violates section 219;

the Commission (in addition to exercising any other remedial authority available to the Commission under this Act) shall exercise the remedial authority established in subparagraph (E).

(E)(i) In the case of any failure to comply or violation specified in subparagraph (D), the Commission shall—

(I) require the fully separated subsidiary involved to cease the offering of the service, facility, or product involved until the Commission determines that there no longer exists a failure to comply with, or a violation of, the requirement involved; or

(II) assess a forfeiture penalty of not more than $500,000 against the dominant carrier, affiliated organization, or fully separated subsidiary, as the case may be.

The penalty established in subclause (II) may be in addition to, or in lieu of, the remedy established in subclause (I), at the discretion of the Commission.

(ii) In any case in which a dominant carrier, affiliated organization, or fully separated subsidiary is required to pay a forfeiture penalty under clause (i)(II), no deduction shall be allowed under subsection (a) of section 162 of the Internal Revenue Code of 1954 (relating to trade or business expenses) for the amount of such penalty.

(F) (i) The Commission shall include in each annual report to the Congress made by the Commission under section 4(k) a detailed statement of any enforcement action taken by the Commission to carry out this paragraph during the year involved.

(ii) The Commission shall conduct a study for the purpose of determining whether legislation authorizing the Commission to establish requirements under this paragraph relating to the structure or organization of dominant carriers, affiliated organizations, and fully separated subsidiaries is necessary to enable the Commission to carry out the purposes of this paragraph. The Commission shall include its findings and recommendations resulting from such study in the annual report made by the Commission under section 4(k) for the 5th year following the year in which the fully separated subsidiary initially established by a dominant carrier under subsection (a) commences the offering of services, facilities, or products.

(d) (1) For purposes of this subsection:

(A) The term "employee" means any employee of a dominant carrier or of any affiliated organization.

(B) The term "regular employee" means any full-time or part-time employee whose employment is expected to be permanent and who is so classified as a regular employee.

(C) The term "transferred employee" means any employee transferred to a fully separated subsidiary by a dominant carrier or by any affiliated organization.

(2) If a dominant carrier or any affiliated organization transfers an employee to a fully separated subsidiary, then such transferred employee shall not be deprived of his employment, salary or wages, or seniority rights during the 5-year period following the date of such transfer. The requirements of this paragraph shall continue to apply in any case in which the fully separated subsidiary retransfers such transferred employee to the dominant carrier or to any affiliated organization, except that any such retransfer shall not have the effect of extending the 5-year period specified in the preceding sentence.

(3) (A) A transferred employee shall be entitled to receive payment (in addition to his regular salary or wages) from the fully separated subsidiary to which he is transferred for reasonable travel expenses and reasonable moving expenses incurred by him or any of his dependents if—

(i) such transferred employee changes his domicile as a result of such transfer; and

(ii) the distance between the new work location of such transferred employee and the former domicile of such transferred employee exceeds the distance between the former work place of such transferred employee and such former domicile by 35 miles or more.

(B) If a collective bargaining agreement applicable to a transferred employee provides transfer benefits which differ from the benefits available to such transferred employee under subparagraph (A), then such transferred employee may select the benefits which shall apply. Such selection shall be made through notice to the dominant carrier or any affiliated organization involved before the end of the 10-day period following the date on which such transferred employee receives

notice of his transfer to a fully separated subsidiary. If such transferred employee does not furnish such notice before the end of such 10-day period, then benefits under the collective bargaining agreement shall apply.

(4) Any pension benefits, health or disability benefits, death benefits, or insurance benefits to which a transferred employee is entitled shall not be restricted, limited, or reduced as a result of his transfer to a fully separated subsidiary, except that the requirements of this paragraph may be superseded by the terms of any collective bargaining agreement between such fully separated subsidiary and any labor organization representing the employees of such fully separated subsidiary.

(5)(A) Except as provided in subparagraph (B), any collective bargaining agreement between a dominant carrier, or any affiliated organization, and any labor organization representing the employees of such dominant carrier or affiliated organization shall continue to apply to any transferred employee during the complete term of such agreement.

(B) A fully separated subsidiary, or any person who owns or controls such fully separated subsidiary, and any labor organization representing the employees of such fully separated subsidiary may enter into a collective bargaining agreement at any time after the establishment of such fully separated subsidiary. Any such agreement—

(i) shall supersede the terms and application of any collective bargaining agreement specified in subparagraph (A); and

(ii) shall supersede the requirements of this subsection to the extent such requirements otherwise would apply to such fully separated subsidiary.

(6)(A) Except as provided in subparagraph (B), if a regular employee is transferred to a fully separated subsidiary by a dominant carrier or by any affiliated organization, and such regular employee is discharged for other than cause during the 7-year period following the date of such transfer, then such regular employee shall be entitled to receive compensation from such fully separated subsidiary in an amount which is not less than the amount of compensation such regular employee would have been entitled to receive from such dominant carrier or such affiliated organization if such dominant carrier or such affiliated organization discharged such regular employee for other than cause immediately before the date of such transfer.

(B) If a collective bargaining agreement between a fully separated subsidiary and any labor organization representing the employees of such fully separated subsidiary is in effect at the time a regular employee is discharged in the manner specified in subparagraph (A), and such collective bargaining agreement applies to such regular employee and provides benefits which differ from the benefits available to such regular employee under subparagraph (A), then such regular employee may select the benefits which shall apply. Such selection shall be made through notice to the fully separated subsidiary before the end of the 10-day period following the date of such discharge. If such regular employee does not furnish such notice before the end of such 10-day period, then benefits under the collective bargaining agreement shall apply.

(7) If any transferred employee is the subject of a layoff during the 7-year period following the date of the transfer of such transferred employee to a fully separated subsidiary, then such transferred employee shall have the first right of rehire in his occupational specialty (or its equivalent) during the 2-year period following the date of the layoff of such transferred employee, except that such right shall not apply unless such transferred employee is physically able, and equipped by training and experience, to perform the duties of the work available. Such fully separated subsidiary shall maintain lists of employees who have been separated from employment through layoffs. Such lists shall contain sufficiently detailed information to enable such fully separated subsidiary to comply with the requirements of this paragraph.

(8) A dominant carrier or any affiliated organization shall not reduce the salary or wages of a regular employee, or separate such regular employee from employment through layoff or termination, during the 6-month period immediately before the establishment of a fully separated subsidiary by such dominant carrier or by such affiliated organization unless—

(A) such regular employee consents to such action; or

(B) such action is not related to the establishment of such fully separated subsidiary.

(9) The provisions of this subsection shall not apply to any employee who is transferred to a fully separated subsidiary after the 7-year period following the date of the establishment of such fully separated subsidiary.

(10) Nothing in this subsection shall be construed to restrict, limit, or eliminate the authority of a dominant carrier, an affiliated organization, or a fully separated subsidiary to discharge an employee, or take any disciplinary or other action against an employee, for cause.

(11) For purposes of the enforcement or protection of rights, priviliges, and immunities granted or guaranteed in this subsection, employees shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by such Act. The National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act

EXTENSION OF LINES

[Sec. 214. (a) No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 or 222 of this Act: *Provided further*, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: *Provided, however*, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.]

Sec. 215. (a)(1)(A) Except as provided in subparagraph (B) and subparagraph (C), no dominant carrier or other regulated carrier shall—

(i) construct any new line or any extension of a line;

(ii) acquire or operate any such line or extension; or

(iii) transmit any telecommunications through the use of any such line or extension;

unless such dominant carrier or other regulated carrier submits a petition to the Commission for such purpose and the Commission determines that any such action by such dominant carrier or other regulated carrier serves the present or future public convenience and necessity.

(B) A determination made by the Commission under subparagraph (A) shall not be required for the construction, extension, acquisition, or operation of—

(i) any line located in a single local exchange area (unless such line constitutes part of a line used to provide interexchange telecommunications service);

(ii) any local, branch, or terminal line which is not more than 10 miles in length;

(iii) any line acquired under section 276 or section 277; or

(iv) any line which is constructed, extended, acquired, or operated in connection with the offering by the dominant carrier or other regulated carrier of any telecommunications service or class of telecommunications services which is not subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission.

(C) The Commission, upon the receipt of an appropriate request, shall have authority to authorize temporary or emergency telecommunications service, or the supplementing of existing telecommunica-

tions facilities, without regard to the other provisions of this section.

(2)(A) Except as provided in subparagraph (C) and subparagraph (D), if a dominant carrier or other regulated carrier (other than a regulated carrier which is subject to the regulatory authority of the Commission under section 212(a)(5) and which is eligible to submit a petition under paragraph (3)) seeks—

(i) to discontinue or reduce the offering of any telecommunications service or facility, or class of telecommunications services or facilities, which is being offered by such dominant carrier or other regulated carrier in a particular market or submarket on the day before the date of the enactment of the Telecommunications Act of 1980, and which (on such day) was subject to the regulatory authority of the Commission under this title; or

(ii) to continue the offering of such service or facility, or class of services or facilities (other than basic telecommunications service), in all such markets or submarkets or in any particular market or submarket—

(I) subject only to that regulatory authority of the Commission under this title which is applicable to all carriers; and

(II) in the case of a dominant carrier, subject to the requirements applicable to fully separated subsidiaries;

then such dominant carrier or other regulated carrier may submit a petition for such purpose to the Commission.

(B) The Commission shall grant any petition submitted under subparagraph (A) unless the Commission determines that—

(i) the dominant carrier or other regulated carrier involved has failed to meet its burden of proof that effective competition exists in the market or submarket involved; or

(ii) the granting of such petition will not serve the present or future public convenience and necessity.

(C) The Commission, upon the receipt of an appropriate request, shall have authority to authorize temporary or emergency discontinuance, reduction, or impairment of telecommunications service, or partial discontinuance, reduction, or impairment of such service, without regard to the other provisions of this section.

(D) An international carrier shall not be entitled to submit any petition under subparagraph (A)(ii).

(3)(A) If any regulated carrier which is subject to the regulatory authority of the Commission under section 212(a)(5) seeks—

(i) to discontinue or reduce the offering of any telecommunications service or facility, or class of telecommunications services or facilities, which was being offered by such regulated carrier in a particular market or submarket on the day before the date of the enactment of the Telecommunications Act of 1980, and which (on such day) was subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission; or

(ii) to continue the offering of such service or facility, or class of services or facilities, in such market or submarket subject only to that regulatory authority of the Commission under this title which is applicable to all carriers;

then such regulated carrier may submit a petition for such purpose to the Commission during the 1-year period following the date of the enactment of the Telecommunications Act of 1980. In any case in which a regulated carrier submits such a petition, such regulated carrier shall provide written notice of the submission of such petition to each user of the services or facilities of such regulated carrier. After such period, any such carrier shall be required to submit any such petition under paragraph (2) in the same manner as any other regulated carrier.

(B) The Commission shall grant any petition submitted under subparagraph (A) unless the Commission determines that the granting of such petition will not serve the present or future public convenience and necessity.

(C)(i) The Commission shall take action with respect to any petition submitted under subparagraph (A) not later than 90 days after notice is published in the Federal Register of receipt of such petition by the Commission, except that the Commission may extend such period for 1 period of 90 days if the Commission considers such extension to be necessary for the disposition of the petition.

(ii) If the Commission fails to take final action with respect to any petition submitted by a regulated carrier under subparagraph (A) before the end of the applicable period under clause (i), then such petition shall be deemed to have been granted by the Commission.

(4) Nothing in this section shall be construed to require authorization by the Commission for any installation, replacement, or other change in plant, operation, or equipment (other than new construction) which will not impair the adequacy or quality of telecommunications service provided by the dominant carrier or other regulated carrier involved.

(5) For purposes of this subsection, the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by connection of 2 or more existing channels.

(b) Upon receipt of an application [for any such certificate] *under subsection (a)*, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, extended, acquired, or operated, or in which such discontinuance, reduction, or impairment of service is proposed *(or in which the dominant carrier or other regulated carrier involved proposes to continue the offering of telecommunications service in accordance with subsection (a)(2)(A)(ii) or subsection (a)(3)(A)(ii), as the case may be)*, with the right to those notified to be heard; and the Commission may require such published notice as it shall determine.

(c) [The Commission shall have power to issue such certificate as applied for, to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require.] *The Commission shall have authority—*

(1) to grant any petition submitted under subsection (a)(1)(A), to refuse to grant such a petition, or to grant such a petition for only a portion of the line involved, for only a portion of the extension of such line, for only a portion of the proposed telecommunications service involved, or for only a partial exercise of the right or privilege sought in such petition; and

(2) to grant any petition submitted under subsection (a)(2)(A) or subsection (a)(3)(A), to refuse to grant such a petition, or to grant such a petition for only a portion of the discontinuance or reduction of telecommunications service involved, or for only a partial exercise of the right or privilege sought in such petition.

The Commission, in granting any such petition, may impose such terms and conditions as in its judgment the public convenience and necessity may require. After [issuance of such certificate] *approval of any such petition by the Commission*, and not before, the [carrier] *dominant carrier or other regulated carrier involved* may, without securing [approval other than such certificate] *any additional approval by the Commission*, comply with the terms and conditions [contained in or attached to the issuance of such certificate] *imposed by the Commission* and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of [service] *telecommunications service (or with the offering of telecommunications service in accordance with subsection (a)(2)(A)(ii) or subsection (a)(3)(A)(ii), as the case may be)* covered thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) Any interexchange carrier which is not otherwise subject to the regulatory authority of the Commission under this title with respect to the offering of any telecommunications service or facility, or class of telecommunications services or facilities, shall—

(1) submit written notice to the Commission not later than the date on which such carrier commences the offering of such service or facility, or such class of services or facilities; and

(2) submit written notice to the Commission not later than 90 days before such carrier discontinues or reduces the provision of such service or facility, or such class of services or facilities.

[(d)](*e*) The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any [carrier] *dominant carrier or other regulated carrier*, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as [a common] *such a* carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the [carrier] *dominant carrier or other regulated carrier* to perform its duty to the public. Any [carrier] *dominant carrier or other regulated carrier* which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall forfeit to the United States *an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $2,500,* [$100] for each day during which such refusal or neglect continues.

REQUIREMENTS APPLICABLE TO FURNISHING OF SERVICES AND FACILITIES

SEC. 216. (a) A dominant carrier and any other regulated carrier—

(1) shall furnish interexchange telecommunications services or facilities which are subject to the regulatory authority of the Commission under this title if a reasonable request is made for such services or facilities;

(2) may not discriminate with respect to the rates, terms, and conditions for such services or facilities; and

***(3) may not establish or maintain any unreasonable or anti-**competitive restriction relating to the furnishing, resale, or sharing of such services or facilities.*

(b) A dominant carrier, any other regulated carrier, and an intraexchange carrier—

(1) shall establish interconnection of its tariffed services with any interexchange carrier if a reasonable request is made for such interconnection;

(2) shall establish interconnection—

(A) with any telecommunications facility or private telecommunications system which meets such uniform, minimum, technical standards as the Commission may establish by rule; and

(B) with any terminal equipment or terminal device which is owned or leased by a customer of such dominant carrier, regulated carrier, or intraexchange carrier and which meets such standards as the Commission may establish under section 211(a)(6)(B); and

(3) may not discriminate in an unreasonable or anticompetitive manner among interexchange carriers or other customers with respect to the rates, terms, and conditions for interconnection.

(c) Each common carrier, other than a dominant carrier or regulated carrier subject to subsection (b), shall establish interconnection—

(1) with any private telecommunications system or telecommunications facility which meets such uniform, minimum, technical standards as the Commission may establish by rule; and

(2) with any terminal equipment or terminal device which is owned or leased by a customer of such carrier and which meets such standards as the Commission may establish under section 211(a)(6)(B).

(d) The Commission shall have authority—

(1) to specify or to approve the manner, rates, terms, and conditions for the provision by any dominant carrier, or any other

regulated carrier, of interexchange telecommunications services or facilities which are subject to regulation by the Commission under this title to other carriers or customers of such dominant carrier or other regulated carrier;

(2) to specify or to approve the manner, rates, terms, and conditions for interconnection between interexchange telecommunications services or facilities and intraexchange telecommunications services or facilities;

(3) to specify or to approve the manner of interconnection between the regulated telecommunications services and facilities of a dominant carrier, any other regulated carrier, or an intraexchange carrier and—

(A) any telecommunications facility or private telecommunications system which meets such uniform, minimum, technical standards as the Commission may establish by rule; and

(B) any terminal equipment or terminal device which is owned or leased by a customer of such dominant carrier, regulated carrier, or intraexchange carrier and which meets such standards as the Commission may establish under section 211(a)(6)(B); and

(4) to prohibit discrimination specified in subsection (b)(3) by dominant carriers, regulated carriers, or intraexchange carriers.

(e) The Commission may reduce or eliminate duties imposed upon common carriers by subsection (c) to the extent necessary to carry out the purposes of this title. The provisions of subsection (c) shall not be construed to grant the Commission any authority to review or establish any rates, terms, or conditions applicable to interconnection.

[(a)**]*** *(f)* It shall be the duty of every common carrier engaged in **[**interstate or**]** foreign **[**communication by wire or radio**]** *telecommunications* to furnish such **[**communication**]** *telecommunications* service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

[(b)**]**** *(g)* All charges, practices, classifications, and regulations for and in connection with **[**such communication service**]** *the provision of telecommunications service by dominant carriers and other regulated carriers,* shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful: *Provided,* That **[**communications by wire or radio**]** *telecommunications service* subject to this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: *Provided further,* That nothing in this

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*This provision appears as section 201(a) in the Communications Act of 1934.
**This provision appears as section 201(b) in the Communications Act of 1934.

Act or in any other provision of law shall be construed to prevent a [common carrier] *dominant carrier or other regulated carrier* subject to this Act from entering into or operating under any contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: *Provided further*, That nothing in this Act or in any other provisions of law shall prevent a [common carrier] *dominant carrier or other regulated carrier* subject to this Act from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such [common carrier] *dominant carrier or other regulated carrier* is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.

DISCRIMINATION AND PREFERENCES

SEC. [202.] *217.* (a) It shall be unlawful for any [common carrier] *dominant carrier or other regulated carrier* to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like [communication] *telecommunications* service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services, whenever referred to in this Act, include charges for, or services in connection with, the use of [common carrier lines of communication] *facilities of a dominant carrier or other regulated carrier*, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

(c) Any *dominant carrier or other regulated* carrier who knowingly violates the provisions of this section shall forfeit to the United States [the sum of $500] *an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $100,000*, for each such offense and [$25] *an amount assessed by the Commission in accordance with such procedure, which shall not exceed $5,000*, for each and every day of the continuance of such offense.

[INQUIRIES INTO MANAGEMENT

[SEC. 218. The Commission may inquire into the management of the business of all carriers subject to this Act, and shall keep itself informed as to the manner and method in which the same is conducted and as to technical developments and improvements in wire and radio communication and radio transmission of energy to the end that the benefits of new inventions and developments may be made available to the people of the United States. The Commission may obtain from such carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.]

FURNISHING OF CERTAIN SERVICES, FACILITIES, AND PRODUCTS BY DOMINANT CARRIERS

Sec. 218. (a) (1) Notwithstanding the terms and conditions of any consent judgment or decree entered into before the date of the enactment of the Telecommunications Act of 1980, and subject to the requirements of this section, any dominant carrier which is subject to such judgment or decree, and any affiliated organization, may provide any service, facility, or product which is not subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission and which is—

(A) a telecommunications service, facility, or product; or

(B) a service, facility, or product incidental to telecommunications.

(2) (A) (i) Notwithstanding any other provision of this Act, and except as provided in clause (ii), no dominant carrier or affiliated organization (including any fully separated subsidiary of such dominant carrier) may provide (within any area in which such dominant carrier is providing intraexchange telecommunications service) any alarm service, cable service, mass media service, or mass media product through any facility which is owned or controlled by such dominant carrier, affiliated organization, or fully separated subsidiary.

(ii) The provisions of this paragraph shall not be construed to prohibit any dominant carrier, any affiliated organization, or any fully separated subsidiary of such dominant carirer from—

(I) leasing or otherwise providing facilities for the provision of any alarm service, cable service, mass media service, or mass media product (in accordance with subsection (b)) to any person who is not affiliated with such dominant carrier, affiliated organization, or fully separated subsidiary;

(II) providing any broadband telecommunications service which does not involve program origination or mass media service; or

(III) transmitting television or radio broadcasting signals as a carrier (which does not include the provision of cable service).

(B) In any case in which any dominant carrier, any affiliated organization, or any fully separated subsidiary of such dominant carrier provides facilities for the provision of any mass media service or mass media product, such dominant carrier, affiliated organization, or fully separated subsidiary shall make such facilities available on a nondiscriminatory basis to any person who originates or otherwise provides any mass media service or mass media product and who makes a reasonable request for the use of such facilities.

(b) (1) If a dominant carrier or any affiliated organization seeks to engage in the offering of any service, facility, or product incidental to telecommunications in accordance with subsection (a), then such dominant carrier or affiliated organization shall engage in the offering of such service, facility, or product only—

(A) in a manner which complies with the requirements of section 219(d); and

(B) through the establishment (in accordance with section 214 and section 219) of 1 or more fully separated subsidiaries.

(2) The offering of such service, facility, or product shall not be subject to any other regulatory authority of the Commission under this title or to the regulatory authority of any State commission, except that such offering shall be subject to—

(A) that regulatory authority of the Commission which is applicable to all carriers; and

(B) the requirements applicable to fully separated subsidiaries.

(3) If such dominant carrier or affiliated organization ceases to be subject to the applicable terms and conditions of any consent judgment or decree specified in subsection (a), then the provisions of section 214(a)(3) shall apply to such dominant carrier or affiliated organization.

(c) Nothing in any amendment made to this Act by the Telecommunications Act of 1980 (other than the provisions of subsection (a)(2)(A)(i) of this section) shall be construed to affect—

(1) the authority of the Commission to establish rules or requirements relating to the offering of cable service by intraexchange carriers (or any entity affiliated with any such carrier) directly to subscribers located in their service areas; or

(2) any rules of the Commission, relating to the offering of such service, which are in effect on the date of the enactment of the Telecommunications Act of 1980.

(d)(1) Except as provided in paragraph (2) and in subsection (a), the provisions of this section shall not be construed to limit or restrict the manner in which, or the extent to which, any dominant carrier or affiliated organization which is subject to any consent judgment or decree specified in subsection (a)(1) is permitted to engage in, or is engaging in, any activity in accordance with the terms of such judgment or decree on the date of the enactment of the Telecommunications Act of 1980.

(2) This subsection shall not be construed to authorize or permit such dominant carrier or affiliated organization to offer any service, facility, or product incidental to telecommunications—

(A) except to the extent, and in the manner, such offering is authorized or permitted by any other provision of this section; and

(B) except for any terminal equipment or terminal device which is described in section 219(f)(4)(A), and which is regulated by the Commission or by any State commission in a manner consistent with section 231(a)(3).

(e) For purposes of this section:

(1) The term "alarm service" means the provision to the public of any intrusion alarm service or any fire alarm service, or both, by any person.

(2) The term "cable service" means the retransmission of any television or radio broadcasting signal, or program origination, for distribution by cable or any other closed transmission medium to multiple subscribers who pay to receive such service.

(3) The term "mass media" includes, but is not limited to, television and radio broadcasting, cable television, pay television, and printed or electronic publications (including newspapers, period-

icals, and any service or product like or similar to all or part of the function of a newspaper or periodical or any portion of a newspaper or periodical). Such term does not include telephone number or address listings and directory assistance (limited to telephone number, address, and business category), weather or time information, or data retrieval services which do not provide any information which is like or similar to information provided by newspapers, periodicals, or television and radio broadcasting. The Commission shall have authority to determine in disputed cases whether any proposed service or product is a mass media service or product.

(4) The term "program origination" means the distribution of any program (including news, public affairs, entertainment, sports, educational programs, or religious affairs) by any person who may exercise control over the content or source of such program.

REGULATION OF TRANSACTIONS BETWEEN DOMINANT CARRIERS AND FULLY SEPARATED SUBSIDIARIES

SEC. 219. (a)(1) Any conduct of business between any dominant carrier or affiliated organization and any fully separated subsidiary shall be on a fully auditable and compensatory basis, and shall be subject to the requirements established in paragraph (4), subsection (f)(2)(C), subsection (f)(2)(D), and subsection (f)(2)(F). Such conduct of business shall be pursuant to contract and shall be reported to the Commission under such rules as the Commission determines necessary. The Commission shall make such contracts, or portions of contracts, available for public inspection to the extent necessary to ensure proper enforcement of this section.

(2) The provisions of paragraph (1) shall not require any fully separated subsidiary or affiliated organization to furnish any telecommunications service, facility, product, subassembly, or component, or any service, facility, or product incidental to telecommunications, to any unaffiliated person, except as may be required under paragraph (4), subsection (g)(2)(C), or subsection (g)(2)(D).

(3)(A) In addition to the requirements of section 216, the conduct of business by any dominant carrier (other than any person who owns or controls a dominant carrier) or any affiliated organization with an unaffiliated person shall be carried out in the same manner as such business is conducted between such carrier or affiliated organization and any fully separated subsidiary. The conduct of business between a dominant carrier (other than any person who owns or controls a dominant carrier) or any affiliated organization and any fully separated subsidiary shall not be based upon, or include, any preference or discrimination arising out of affiliation.

(B) Nothing in this paragraph shall prohibit or otherwise restrict any dominant carrier, affiliated organization, or fully separated subsidiary from exercising its independent, ordinary business discretion in connection with business conducted with unaffiliated persons.

(4) In addition to any other authority which the Commission may exercise under this Act, the Commission shall have authority to reg-

ulate any dominant carrier and its affiliated organizations (other than any fully separated subsidiary) for the purpose of—

(A) dealing with anticompetitive practices between the fully separated subsidiary and the dominant carrier, its subsidiaries, or any affiliated organization; and

(B) protecting users of telecommunications services which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission, in connection with dealings between such dominant carrier, and its affiliated organizations, and any fully separated subsidiary.

Nothing in this section shall be construed to limit the authority of the Commission under section 214(b)(1) or section 214(c)(2).

(5) Except as provided in section 214(c)(1), nothing in this Act is intended to preclude corporate management from directing the operation of the dominant carrier, any affiliated organization, and any fully separated subsidiary, except that costs of such direction shall be properly allocated to the dominant carrier, affiliated organization, or fully separated subsidiary.

(b)(1) The Commission shall establish procedures under this subsection with respect to the disclosure of information in accordance with paragraph (2) and consistent with subsection (a)(3), except that the requirements of this subsection also shall apply to any person who owns or controls a dominant carrier. Such procedures shall require each dominant carrier and affiliated organization (and any other regulated carrier, for purposes of subparagraph (C)) to maintain and file with the Commission a description of the operational protocols and technical interface requirements for connection with or use of any regulated telecommunications network, and to report regularly to the Commission—

(A) any material change relating to such protocols or requirements which has been adopted or implemented, or for which a decision has been made to adopt or implement, including any information or technical requirements relating to the capacity of services, facilities, or products to function effectively and efficiently if interconnected with any telecommunications service or facility furnished by a dominant carrier;

(B) any material change in any operational protocol or technical interface requirement not already disclosed under subparagraph (A) which will be required by the specific design or development of any service, facility, or product;

(C) summaries of construction programs or activities intended to maintain, extend, or expand the regulated network services or facilities of a dominant carrier or any other regulated carrier which is subject to regulation under section 212(a)(4), if such information affects connection with or the functioning of the service offerings of competing carriers or persons seeking interconnection with any telecommunications service or facility furnished by such dominant carrier or other regulated carrier;

(D) similar information relating to any regulated telecommunications network the disclosure of which the Commission determines to be necessary on its own initiative or in response to a petition submitted by any interested person; and

(E) other information regarding any regulated telecommunications network of a dominant carrier which affects the capacity of services, facilities, or products to function effectively and efficiently if interconnected with such network.

(2) In any case in which a submission to the Commission is required under paragraph (1), any person may obtain the information which is the subject of such submission from the Commission upon reasonable request and payment of reasonable copying and processing fees, unless the Commission, after consultation with the agencies designated in Executive Order No. 12046 (March 27, 1978; 43 Federal Register 13349), determines that the furnishing of such information would be detrimental to the national defense and security or to the emergency preparedness of the Nation. Any such request for information shall be subject to the provisions of section 552 of title 5, United States Code.

(3) The Commission also shall establish procedures prohibiting the disclosure by a dominant carrier of any commercial information acquired in its provision of telecommunications services which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission, which would be of value to the fully separated subsidiary or to any unregulated entity, except that the Commission may require that specific categories of such information, such as directory listings, shall be made available to all parties, including any fully separated subsidiary, unregulated entities, and unaffiliated persons, at the same time, at the same rates, and on the same terms and conditions.

(c) Any person who seeks to obtain any accounting information (including any related report or memorandum) which is prepared by any dominant carrier or affiliated organization in compliance with the requirements of this section, or in compliance with any other provision of this Act added by the amendments made by the Telecommunications Act of 1980, may petition the Commission for the issuance of an order requiring such dominant carrier or affiliated organization to disclose such information. The Commission shall issue such order upon a proper showing by such person that there is good cause for the issuance of such an order, such as reason to believe that a violation of section 254 has occurred. If such accounting information is an agency record in the possession or control of the Commission, and any person seeks to obtain such accounting information from the Commission, such person may request the disclosure of such information in accordance with section 552 of title 5, United States Code.

(d) No dominant carrier or affiliated organization may directly or indirectly assign any costs (including costs incurred before the date of the enactment of the Telecommunications Act of 1980, and including costs associated with research and development) in violation of subsection (e)(1)(A) or section 254, including any assignment of costs to the expenses or rate base of such dominant carrier, if such costs properly should be assigned to any fully separated subsidiary of such dominant carrier or to activities of the dominant carrier or any affiliated organization which benefit any fully separated subsidiary. The Commission shall have the authority to carry out the provisions of this subsection and the provisions of section 254, including the authority to investigate any transaction or assignment of costs.

(e)(1) During the transition period established in subsection (f), and before any subsidiary of a dominant carrier shall be considered

a fully separated subsidiary for purposes of this Act, the dominant carrier shall file with the Commission a plan demonstrating that—

(A) the dominant carrier and any affiliated organization have an accounting system which ensures a complete separation between—

(i) all costs related to services, facilities, and products which are developed, manufactured, or offered by such dominant carrier or any affiliated organization (other than the costs of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization); and

(ii) all costs of any fully separated subsidiary, including those related to services, facilities, and products which are developed, manufactured, or offered by any fully separated subsidiary of a dominant carrier, or of any affiliated organization, or as the result of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization;

(B) such accounting system is established and maintained in a manner which ensures compliance with subsection (a)(1);

(C) the proposed fully separated subsidiary complies with the requirements of section 214(c)(1); and

(D) the assets, including capital, proposed for transfer to the proposed fully separated subsidiary have been fairly and properly valued.

The valuation specified in subparagraph (D) shall be binding upon the States upon approval of such plan by the Commission.

(2)(A)(i) Not later than 180 days after the filing of such plan, the Commission shall issue an order announcing its approval or disapproval of such plan, stating the specific aspects of such plan which violate the provisions of this Act or the rules of the Commission. The Commission, before issuing such order, shall publish notice of the receipt of such plan and shall provide an opportunity for the submission of public comments regarding such plan during such 180-day period. The Commission, during such 180-day period, shall in a timely manner seek to obtain the opinion of the Attorney General of the United States regarding all aspects of such plan. The Commission shall not have any authority to extend such 180-day period for the purpose of receiving public comments or for any other purpose.

(ii) In the case of disapproval by the Commission, the dominant carrier then may file an amended plan modifying the original plan to correct those aspects of such plan cited by the Commission as violating the provisions of this Act or the rules of the Commission. The Commission shall issue an order, not later than 60 days after the filing of such amended plan, approving such amended plan if it corrects such aspects. The Commission, before issuing such order, shall publish notice of the receipt of such amended plan and shall provide an opportunity for the submission of public comments regarding such amended plan during such 60-day period.

(B) Failure of the Commission to issue an order under this paragraph before the end of the applicable time period shall constitute approval of the plan or amended plan involved.

(3) After approval of any plan or amended plan under paragraph (2), a dominant carrier—

(A) shall notify the Commission with respect to any minor revision of, or addition to, such plan, and with respect to any minor transfer of assets, for review by the Commission to ensure that such revision, addition, or transfer complies with the requirements of paragraph (1); and

(B) shall submit any significant revision of, or addition to, such plan, and any significant transfer of assets, to the Commission for approval in accordance with paragraph (1) and paragraph (2) before carrying out such proposed revision, addition, or transfer.

The requirements of this paragraph shall apply during and after the transition period established in subsection (g).

(f)(1) Subject to the provisions of section 214 and section 218, a fully separated subsidiary of a dominant carrier may offer any telecommunications service, facility, or product (other than basic telecommunications service), and any service, facility, or product incidental to telecommunications, as provided in this section under the conditions specified in paragraph (2).

(2)(A) Not later than 4 years after the date of the enactment of the Telecommunications Act of 1980, the final assembly, including all aspects integral to final assembly, of any products which are required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons.

(B) Not later than 4 years after such date of enactment, all applied research for, and development of, any telecommunications services, facilities, or products (including software), or services, facilities, or products (including software) incidental to telecommunications, which are required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons.

(C) Not later than 6 years after such date of enactment, all subassemblies (including any subassembly-specific research and development) incorporated in any product incidental to telecommunications which is required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons, except that nothing in this subsection shall, at any time after such 6-year period, be construed to prohibit the fully separated subsidiary from acquiring any subassembly from an affiliated organization if such affiliated organization also sells the same type of subassemblies to unaffiliated persons at the same rates and on the same terms and conditions.

(D) Not later than 8 years after such date of enactment, all components (including any component-specific research and development) incorporated in any telecommunications product, or any product incidental to telecommunications, which is required to be offered exclusively by a fully separated subsidiary shall be provided by a fully separated subsidiary or acquired from unaffiliated persons, except that nothing in this subsection shall, at any time after such 8-year period, be construed to prohibit a fully separated subsidiary from acquiring any component from an affiliated organization if such affiliated orga-

nization also sells the same type of components to unaffiliated persons at the same rates and on the same terms and conditions.

(E) The time periods established in this paragraph shall be extended if the Commission determines that events beyond the control of the dominant carrier, or other good cause, warrant any such extension.

(F)(i) During the applicable time period established in subparagraph (A), subparagraph (B), subparagraph (C), or subparagraph (D), the services or products including any subassembly, basic component, and research and development) which are subject to any such time period—

(I) shall be furnished to any fully separated subsidiary by a dominant carrier or affiliated organization for an amount which is fully compensatory and which is not less than the cost allocated to such service or product in connection with regulated activities carried out by the dominant carrier involved, except that in no case shall such amount be less than the rates for which similar services and products would be or are transferred in the marketplace between unaffiliated persons; and

(II) any business which is conducted in connection with any such service or product shall be on the same terms and conditions under which similar services and products would be or are transferred in the marketplace between unaffiliated persons.

(ii) In any case in which any conduct of business relating to any service or product specified in clause (i) is conducted at rates, terms, and conditions which are more favorable to the recipient than the rates, terms, and conditions under which similar services or products would be or are transferred in the marketplace between unaffiliated persons, the requirements of clause (i) shall not apply if the dominant carrier or affiliated organization which furnished the service or product involved demonstrates to the Commission that the rates, terms, and conditions involved in the conduct of business result from more efficient operation and lower direct costs, and do not result from the allocation of common overhead or other similar factors.

(3)(A) The conditions and limitations specified in subparagraph (B) shall apply to dominant carriers, affiliated organizations, and fully separated subsidiaries.

(B)(i) Any manufacturing facilities constructed for the provision of telecommunications services, facilities, or products, or services, facilities, or products incidental to telecommunications, which are required to be offered exclusively by a fully separated subsidiary commenced after approval of the plan required in subsection (e)(1) shall be owned by a fully separated subsidiary.

(ii) A fully separated subsidiary shall not provide terminal equipment or terminal devices during the 3-year period following the date of the enactment of the Telecommunications Act of 1980 unless the final assembly of such terminal equipment or terminal devices is performed by a fully separated subsidiary or acquired from unaffiliated persons.

(iii) A fully separated subsidiary shall not provide any interexchange telecommunications services or facilities which are in existence on the date of the enactment of the Telecommunications Act of 1980, or any interexchange telecommunications services or facilities

which are essentially similar to services or facilities which are being offered on such date of enactment, during the 4-year period following such date of enactment unless the Commission determines in accordance with the provisions of section 215 that effective competition exists in the particular market or submarket in which any such interexchange telecommunications service or facility will be offered.

(iv) Subject to the requirements of section 214, a dominant carrier, an affiliated organization, or a fully separated subsidiary shall not provide services, facilities, or products incidental to telecommunications (other than terminal equipment and terminal devices), unless the final assembly and any associated development (including software) essential to such provision is performed by a fully separated subsidiary or acquired from unaffiliated persons. Any research and development (including software) associated with any specific service, facility, or product commenced after the approval of the plan required in subsection (e)(1) shall be performed by a fully separated subsidiary or acquired from unaffiliated persons.

(4) A dominant carrier may not offer any telecommunications services, facilities, or products subject to the regulatory authority of the Commission or of any State commission (other than basic telecommunications service, intraexchange telecommunications service, and any other service regulated by the Commission under section 214(b)(1)), except as follows:

(A) terminal equipment and terminal devices of a type which are being offered by such dominant carrier on the date of the enactment of the Telecommunications Act of 1980, during—

(i) the 4-year period following such date of enactment; or

(ii) the period beginning on such date of enactment and ending on the date of the approval of the plan required in subsection (e)(1), if such period ends before the end of such 4-year period; and

(B) interexchange telecommunications services and facilities until deregulated under section 215, except that no new class of interexchange telecommunications service shall be introduced under regulation after the 3-year period following such date of enactment.

(g) The Commission shall not have any authority to establish any requirements relating to—

(1) the structure or organization of any affiliated organization or fully separated subsidiary;

(2) any activities of a dominant carrier or person who owns or controls a dominant carrier which this section, section 214, or section 218 requires to be conducted by a fully separated subsidiary; or

(3) the conduct of business between any dominant carrier or affiliated organization and any fully separated subsidiary;

which are not consistent with any provision of this section, section 214, or section 218, which establishes requirements relating to such structure or organization or to such conduct of business.

(h) Not later than 1 year after the date of the enactment of the Telecommunications Act of 1980, the Commission shall prescribe such rules as may be necessary to carry out the provisions of this section.

The Commission shall have authority to exercise any enforcement authority established in this Act to carry out such provisions and such rules.

DETERMINATION OF EFFECTIVE COMPETITION

SEC. 220. For purposes of this part, a carrier shall be considered to be subject to effective competition with respect to any telecommunications services or facilities offered by such carrier in a particular market or submarket if there are available in such market or submarket reasonable alternatives to such services or facilities which are offered by unaffiliated persons and which are the same as, or substantially similar to, the telecommunications services or facilities offered by such carrier. The Commission, in determining whether reasonable alternatives are available in the relevant markets or submarkets, shall consider—

(1) the number and size of unaffiliated persons providing such services or facilities;

(2) the extent to which such services or facilities are available from unaffiliated persons in the relevant markets or submarkets; and

(3) the ability of such unaffiliated persons to make such services or facilities readily available at comparable rates, terms, and conditions.

The Commission also shall take into account other indicators of the extent of competition.

PART B—ACCESS FEES; NATIONAL TELECOMMUNICATIONS POOL; PROTECTIONS FOR RATE PAYERS; CARRIER LIABILITY

ESTABLISHMENT OF TRANSITIONAL JOINT BOARD

SEC. 231. (a) Not later than 90 days after the date of the enactment of the Telecommunications Act of 1980, a transitional joint board shall be established in accordance with this section for the purpose of—

(1) providing for an orderly transition to the system of intraexchange access fees established in section 233;

(2) ensuring equitable economic treatment of subscribers to basic telecommunications service, and of interexchange carriers; and

(3) providing for the orderly, phased removal of terminal equipment and terminal devices in use on such date of enactment from the rate bases of carriers.

(b) The authority of the transitional joint board with respect to the functions established in this section shall supersede the authority of any joint board established under section 410 and in existence on the date of the enactment of the Telecommunications Act of 1980.

(c) The transitional joint board shall be composed of—

(1) 3 commissioners of the Commission, designated by the Commission; and

(2) 2 State commissioners nominated in accordance with section 410(c) and approved in accordance with section 410(a).

(d) The transitional joint board shall appoint and fix the pay of such officers, engineers, accountants, attorneys, inspectors, examiners,

and other personnel as may be necessary to assist the transitional joint board in carrying out its functions under this section. The staff of the transitional joint board shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(e) The transitional joint board shall have authority to perform such acts, to establish such rules and regulations, and to issue such orders as are consistent with the provisions of this Act and as may be necessary to carry out its functions under this title. The transitional joint board shall—

(1) have authority to make minor modifications under section 211(d)(3)(B) with respect to rules applicable to the establishment of local exchange boundaries which encompass parts of 2 or more standard metropolitan statistical areas, and boundaries for local exchange areas which include geographical areas in more than 1 State;

(2) establish and implement rules for orderly, phased capital recovery and the orderly, phased removal of terminal equipment and terminal devices in use on the date of the enactment of the Telecommunications Act of 1980 from the rate bases of carriers, and for ensuring the continued availability of such equipment and devices to customers during an appropriate transition period;

(3) establish and maintain formulas for determining the amounts and means necessary to fund the accounts of the National Telecommunications Pool, and to order and oversee the distribution of funds from the National Telecommunications Pool in accordance with subsection (d), subsection (e), and subsection (f) of section 233;

(4) make such changes and modifications in jurisdictional separation and settlements procedures (established under section 276(c) and section 410(c) and in effect on the date of the enactment of the Telecommunications Act of 1980) as may be necessary or appropriate for the orderly transition to the system of intraexchange access fees established in section 233 to compensate equitably intraexchange carriers for the costs of distributing interexchange telecommunications through the use of the facilities of such intraexchange carriers;

(5) determine at regular intervals the relative assignment by intraexchange carriers of costs of intraexchange telecommunications facilities which are not directly caused by the volume of interexchange telecommunications transmitted through the use of such facilities, to interexchange telecommunications services, to assure that interexchange carriers and other customers pay amounts which reflect the cost of using the facilities of intraexchange carriers, except that the total level of payments from interexchange carriers and other customers to intraexchange carriers pursuant to access fees and the National Telecommunications Pool shall not exceed the level of payments which exists on June 1, 1980, exclusive of any increases in direct costs or payments reflecting increases in relative usage;

(6) furnish advice to the Commission with respect to determinations of the Commission regarding terms and conditions for equivalent access by interexchange carriers and other customers for interconnection with intraexchange telecommunications facilities, and regarding the manner of such interconnection; and

(7) establish and implement an orderly transition which (A) provides for the termination of any imputation by the State commissions of revenues from printed directory advertising to regulated carrier activities for ratemaking purposes; and (B) shall be consistent with the maintenance of reasonable and affordable rates for intraexchange telecommunications service.

(f) The transitional joint board shall submit annual reports to each House of the Congress with respect to activities of the transitional joint board under this title.

(g)(1) Any rulemaking or adjudication of the transitional joint board under this section shall be subject to chapter 5 of title 5, United States Code.

(2) Any action taken by the transitional joint board under this section shall be considered to be a final action subject to appeal under subsection (a) of section 402, and subsections (c) through (j) of section 402.

(h) Except as provided in subsection (c)(2), the provisions of section 410 shall not apply to the transitional joint board.

(i) The transitional joint board shall terminate at the end of the 72-month period following the date of the enactment of the Telecommunications Act of 1980. Upon such termination, and subject to the provisions of section 252(b)(4), the powers and responsibilities of the transitional joint board shall be carried out by the Commission.

SCHEDULES OF CHARGES

SEC. [203.] *232.* (a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for [interstate and foreign wire or radio communication] *interexchange telecommunications service, and foreign transmissions,* between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this Act when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b)(1) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published *by a* *dominant carrier or other regulated carrier* except after ninety days notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe. *In the case of any other carriers, such notice shall be made at any time before any such change is made.*

(2) The Commission may, in its discretion and for good cause shown [,] *(A)* modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions except that the Commission may not require the notice period specified in paragraph (1) to be more than ninety days*; and (B) prescribe a different charge for an interim period, but not for a longer period than 1 year beyond the time when the charge filed with the Commission would otherwise go into effect.*

(c) No [carrier] *dominant carrier or other regulated carrier*, unless otherwise provided by or under authority of this Act, shall [engage or participate in such communication] *provide interexchange telecommunications service or foreign transmissions* unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no [carrier] *dominant carrier or other regulated carrier* shall (1) charge, demand, collect, or receive a greater or less or different compensation, for [such communication] *the provision of such service or transmissions*, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities, in [such communication] *the provision of such service or transmissions*, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States [the sum of $500] *an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $100,000*, for each such offense, and [$25] *an amount assessed by the Commission in accordance with such procedure, which shall not exceed $5,000*, for each and every day of the continuance of such offense.

INTRAEXCHANGE ACCESS FEES

SEC. 233. (a) It is the purpose of this section to establish a system of intraexchange access fees for the use of the services and facilities of intraexchange carriers by interexchange carriers and other customers and to modify the jurisdictional separation and settlement procedures established under section 276(c) and section 410(c) and in effect *on the date of the enactment of the Telecommunications Act of 1980, in order to—*

(1) achieve equality of treatment among all interexchange carriers and other customers using the services and facilities of each intraexchange carrier through direct or indirect interconnection for the distribution of interexchange telecommunications and to prevent subsidies from intraexchange carrier activities to interexchange carrier activities;

(2) assure that payments and assignments of costs relating to access to intraexchange telecommunications services and facilities by interexchange carriers and other customers are carried out in a manner which is open to public examination and which ensures accountability to the public;

(3) achieve flexibility in accommodating changes in market conditions and technology;

(4) establish incentives for efficient investment decisions and technological choices; and

(5) ensure that intraexchange carriers are compensated equitably for the costs of distributing interexchange telecommunications through the use of intraexchange services and facilities in order to ensure the continued universal availability of basic telecommunications service provided by intraexchange carriers at reasonable and affordable rates.

(b)(1) Subject to the provisions of subsection (c), each intraexchange carrier shall submit to the Commission a schedule of fees for the use of each of its basic switched services and facilities by all interexchange carriers and other customers which interconnect with such facilities. Provision of services and facilities by intraexchange carriers to interexchange carriers or other customers, and payment for such services and facilities, by interexchange carriers or other customers, shall be solely pursuant to schedules of access fees established under this section.

(2) Each schedule of fees submitted by an intraexchange carrier under paragraph (1) shall consist of, and shall specifically identify—

(A) all costs caused directly by interconnection and all costs caused directly by the volume of interexchange traffic, reflecting variances in the manner of interconnection and the services and facilities requested by and rendered to an interexchange carrier or other customer by such intraexchange carrier;

(B) a portion of those other costs of intraexchange telecommunications services and facilities associated with both intraexchange telecommunications service and the distribution of interexchange telecommunications service by such intraexchange carrier, as determined under section 231(e)(5), except that amounts in excess of the cost of the use of intraexchange telecommunications facilities determined by the transitional joint board to be necessary to avoid substantial or undue rate increases shall be recovered by eligible carriers from the National Telecommunications Pool, and shall not be recovered by such carriers from access fees; and

(C) any amount established and maintained under subsection (e)(1) and any amount established and maintained under subsection (e)(2).

(3) Each schedule of fees shall include a certification by the intraexchange carrier submitting such schedule of fees that such intraexchange carrier is in compliance with the requirements of this section and section 216(b)(3).

(4) Each schedule of fees shall take into account differences in the manner of interconnection and the related services requested by and rendered to different interexchange carriers and other customers by an intraexchange carrier, for the purpose of ensuring that such differences are reflected in the various levels of such fees.

(5) Except as provided in section 231(e)(2), no carrier shall include in such schedule of fees any costs associated with the provision of any service, facility, or product which is not subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission.

(6)(A) The Commission shall approve, disapprove, or modify any such schedule of fees to ensure that such fees are consistent with the provisions of this section. In the case of all schedules of fees which are submitted by an intraexchange carrier after the initial schedule of fees of such carrier is approved by the Commission, the Commission shall take final action under this paragraph not later than 180 days after the date of such submission.

(B) The Commission, before approving any schedule of fees, shall take such action as may be necessary to verify that the intraexchange carrier involved is in compliance with the requirements of this section and section 216(b)(3). If the Commission determines that such intraexchange carrier is not in compliance with such requirements, then the Commission shall—

(i) direct that such intraexchange carrier comply with such requirements not later than 1 year after the date of such determination; and

(ii) establish an interim schedule of fees for use by such intraexchange carrier which is designed to ensure prompt compliance with such requirements.

(c)(1) Any schedule of fees for access to any intraexchange telecommunications service or facility provided by any intraexchange carrier which, together with any affiliated intraexchange carrier, serves not more than 50,000 main stations and equivalent stations shall be subject to the jurisdiction of the State commission for the State in which the service area of such intraexchange carrier is located. Such State commission shall have authority to approve, disapprove, or modify such schedule of fees in accordance with this Act and rules established by the Commission. The authority and responsibilities of the Commission under subsection (b)(6)(B) shall apply to such State commission under this paragraph.

(2) Any person may submit a petition to the Commission alleging that a State commission is not exercising its regulatory authority in accordance with this Act or rules established by the Commission. If the Commission determines that a proper showing has been made by such person, then the Commission, after consultation with such State commission, shall prescribe a schedule of fees which the Commission considers to be just and reasonable.

(3)(A) The initial schedules of fees which are required to be established under subsection (b)(1) shall take effect at the end of the 3-year

period following the date of the enactment of the Telecommunications Act of 1980. Before the effective date of such schedules, all charges or other forms of reimbursement for access by interexchange carriers and other customers to intraexchange telecommunications services and facilities shall be governed by tariffs or contracts in effect as of June 1, 1980, except that the Commission may modify any such tariff or contract if such modification is required to carry out the purposes of this Act.

(B) During the period beginning on the date on which access fees first take effect under subparagraph (A) and ending at the end of the 6-year period following the date of the enactment of the Telecommunications Act of 1980, uniform adjustments shall be made—

(i) in the relative allocation of the amount assigned by the transitional joint board to interexchange telecommunications services under section 231(e)(5) to be paid by different carriers and classes of service; and

(ii) in the relative allocation of the total amount necessary annually for the account established in subsection (e)(3) to be paid by different carriers and classes of service.

Such adjustments shall be made to ensure that all carriers and other customers make an equitable and orderly transition from the level of reimbursements made as of the day before the date on which access fees first take effect under subparagraph (A) to the level of reimbursements which will be paid under subsection (b) and subsection (e).

(d)(1) There hereby is established a National Telecommunications Pool, the administration of which shall be overseen by the transitional joint board.

(2) The National Telecommunications Pool shall consist of the accounts specified in subsection (e).

(e)(1)(A) The National Telecommunications Pool shall include an account consisting of the total amount determined by the transitional joint board to be needed annually by eligible intraexchange carriers to ensure that the costs of such carriers for the distribution of interexchange telecommunications service and intraexchange telecommunications service per main station or equivalent station which, in the aggregate, exceed 110 percent of the national average of such costs will not be borne directly by intraexchange rate payers or by access fees.

(B) All interexchange carriers and other customers directly connecting to basic telecommunications service provided by intraexchange carriers shall make nondiscriminatory payments to such account based upon the annual ratio of the payments of each such carrier or other customer for such interconnection under subsection (b)(2)(A) and subsection (b)(2)(B) to the total of such payments by all such directly connecting interexchange carriers and other customers, pursuant to subsection (b)(2)(C). All traffic indirectly connecting to basic telecommunications service of an intraexchange carrier shall be assessed nondiscriminatory payments to such account in equivalent amounts for equivalent usage of such service.

(C) Intraexchange carriers which, together with any affiliated intraexchange carriers, serve not more than 50,000 main stations and equivalent stations, and which certify to the transitional joint board that their costs for the distribution of interexchange telecommunications service and intraexchange telecommunications service per main

station or equivalent station, in the aggregate, exceed 110 percent of the national average of such costs shall be eligible for payments from the account established in this paragraph and shall be entitled to receive payments for that portion of their costs which exceeds 110 percent of such national average. The transitional joint board shall have authority to designate by rule other intraexchange carriers with high costs for the distribution of intraexchange telecommunications service and interexchange telecommunications service for payments from such account, subject to such modifications as the transitional joint board considers appropriate.

(2)(A) The National Telecommunications Pool also shall include an account to minimize disparities in charges for basic telecommunications service provided by carriers which arise due to greater costs of providing connecting links for such service to and from, or between, rural or other remote areas. The transitional joint board shall establish the total amount necessary annually for such account. All interexchange carriers and other customers directly connecting to basic telecommunications service provided by intraexchange carriers shall make nondiscriminatory payments to such account based upon the annual ratio of the payments of each such carrier or other customer for such interconnection under subsection (b)(2)(A) and subsection (b)(2)(B) to the total such payments by all such directly connecting interexchange carriers and other customers, pursuant to subsection (b)(2)(C). All traffic indirectly connecting to basic telecommunications service of an intraexchange carrier shall be assessed nondiscriminatory payments to such account in equivalent amounts for equivalent usage of such service.

(B) If such disparities in charges for basic telecommunications service would arise without payments from such account, the transitional joint board shall order payments to eligible carriers for such costs to achieve charges to customers which do not exceed 110 percent of the national average charge for comparable service.

(3)(A) The National Telecommunications Pool also shall include an account consisting of the total amount needed annually by intraexchange carriers (as determined by the transitional joint board), in excess of revenues from intraexchange access fees and any payments from the account established in paragraph (1) or paragraph (2) to be collected by an intraexchange carrier, to provide for an orderly transition from the level of payment pursuant to jurisdictional separation and settlements procedures established under section 276(c) and section 410(c) and in effect on June 1, 1980, to the level of payment, based only upon costs, available to intraexchange carriers under the system of intraexchange access fees established in subsection (b)(2), for the purpose of avoiding substantial or undue increases in charges for basic telecommunications service provided by intraexchange carriers which are beyond the control of an intraexchange carrier and which are caused by such transition.

(B) The transitional joint board shall impose surcharges sufficient to recover the total amount necessary annually for the account established in this paragraph upon—

(i) all interexchange carriers and private telecommunications systems directly connecting to basic telecommunications service

provided by intraexchange carriers, based upon the annual ratio of the payments of each such carrier or system for such interconnection under subsection (b)(2)(A) and subsection (b)(2)(B) to the total of such payments by all such interexchange carriers and systems; and

(ii) all traffic indirectly connecting to basic telecommunications service of an intraexchange carrier in equivalent amounts for equivalent usage of such service.

The transitional joint board periodically shall order such payments to intraexchange carriers as may be necessary to carry out the purposes of the account established in this paragraph and the purposes of this section.

(C) The transitional joint board shall establish and publish a plan for such transition and the operation of such account.

(f)(1) The National Telecommunications Pool shall be administered in a manner which expedites the disbursement of funds from the National Telecommunications Pool to eligible carriers through the use of rules and procedures which eliminate burdens or delays in the certification or application process to the maximum extent practicable, and which permit disbursement decisions to be made on the basis of uniform, general, simplified standards of eligibility which are readily applied to the information and other data included in each application.

(2) Payments from the National Telecommunications Pool to individual carriers ordered by the transitional joint board shall be subject to subsequent audit and adjustment by the transitional joint board to determine and to ensure that—

(A) any certification or application is valid and based upon proper allocation of costs pursuant to guidelines established by the transitional joint board or the Commission, as the case may be;

(B) such payments are used to carry out the purposes for which they were intended; and

(C) such payments do not remove incentives for the efficient provision of basic telecommunications service, except that any adjustment based upon the factor established in this subparagraph shall be effective only on a prospective basis.

(g) For purposes of this section, section 216, section 232, and section 254, any carrier which provides both interexchange and intraexchange telecommunications service and facilities shall be considered to be an interexchange carrier to the extent such carrier provides interexchange telecommunications services and facilities shall be considered to be an be an intraexchange carrier to the extent such carrier provides intraexchange telecommunications services and facilities.

HEARING AS TO LAWFULNESS OF NEW CHARGES; SUSPENSION

SEC. [204.] *234.* (a) Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof: and pending such hearing and the decision thereon the Commission, upon delivering to the [carrier or carriers] *dominant carrier or other regulated carrier* affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, in whole or in part but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed new or revised charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed charge for a new service or an increased charge, the Commission may by order require the [interested carrier or carriers] *dominant carrier or other regulated carrier imposing such charge* to keep accurate accounts of all amounts received by reason of such charge for a new service or increased charges, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the [interested carrier or carriers] *dominant carrier or other regulated carrier* to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or increased charges as by its decision shall be found not justified. At any hearing involving a charge increased, or sought to be increased, the burden of proof to show that the increased charge, or proposed charge, is just and reasonable shall be upon the [carrier] *dominant carrier or other regulated carrier* and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commission may allow part of a charge, classification, regulation, or practice to go into effect, based upon a written showing by the [carrier or carriers affected] *dominant carrier or other regulated carrier involved*, and an opportunity for written comment thereon by affected persons, that such partial authorization is just, fair, and reasonable. Additionally, or in combination with a partial authorization, the Commission, upon a similar showing, may allow all or part of a charge, classification, regulation, or practice to go into effect on a temporary basis pending further order of the Commission. Authorizations of temporary new or increased charges may include an accounting order of the type provided for in subsection (a).

COMMISSION AUTHORIZED TO PRESCRIBE JUST AND REASONABLE CHARGES

SEC. [205.] *235.* (a) Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any [carrier or carriers] *dominant carrier or other regulated carrier* is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the [carrier or carriers] *dominant carrier or other regulated carrier* shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(b) Any [carrier] *dominant carrier or other regulated carrier*, any officer, representative, or agent of a [carrier] *dominant carrier or other regulated carrier*, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of this section shall forfeit to the United States [the sum of $1,000] *an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $25,000*, for each offense. Every distinct violation shall be a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

LIABILITY OF [CARRIERS] *DOMINANT CARRIERS AND OTHER REGULATED CARRIERS* FOR DAMAGES

Sec. [206.] *236.* In case any [common carrier] *dominant carrier or other regulated carrier* shall do, or cause, or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such [common carrier] *dominant carrier or other regulated carrier* shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

RECOVERY OF DAMAGES

Sec. [207.] *237.* Any person claiming to be damaged by any [common carrier subject to the provisions of this Act] *dominant carrier or other regulated carrier* may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such [common carrier] *dominant carrier or other regulated carrier* may be liable under the provisions of this Act, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

LIABILITY OF CARRIER FOR ACTS AND OMISSIONS OF AGENTS

Sec. [217.] *238.* In construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.

COMPLAINTS TO THE COMMISSION

Sec. [208.] *239.* Any person, any body politic or municipal organization, or State commission, complaining of anything done or omitted to be done by any [common carrier subject to this Act] *dominant carrier or other regulated carrier*, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such [common carrier] *dominant carrier or other regulated carrier*, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such [common carrier] *dominant carrier or other regulated carrier* within the time specified shall make reparation for the injury alleged to have been caused, the [common carrier] *dominant carrier or other regulated carrier* shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such [carrier or carriers] *dominant carrier or other regulated carrier* shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

ORDERS FOR PAYMENT OF MONEY

Sec. [209.] *240.* If, after hearing on a complaint, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act, the Commission shall make an order directing the [carrier] *dominant carrier or other regulated carrier involved* to pay to the complainant the sum to which he is entitled on or before a day named.

PART C—ORGANIZATION OF CARRIERS; FINANCIAL AND OTHER TRANSACTIONS

[VALUATION OF CARRIER PROPERTY] *VALUATION OF PROPERTY OF DOMINANT CARRIERS AND OTHER REGULATED CARRIERS*

Sec. [213.] *251.* (a) [The] *Subject to section 252(b), the* Commission may from time to time, as may be necessary for the proper administration of this Act, and after opportunity for hearing, make a valuation of all or of any part of the property owned or used by any [carrier subject to this Act] *dominant carrier or other regulated carrier*, as of such date as the Commission may fix.

(b) The Commission may at any time require any such [carrier] *dominant carrier or other regulated carrier* to file with the Commission an inventory of all or of any part of the property owned or used by said [carrier] *dominant carrier or other regulated carrier*, which inventory shall show the units of said property classified in such detail, and in such manner, as the Commission shall direct, and shall show the estimated cost of reproduction new of said units, and their reproduction cost new less depreciation, as of such date as the Commission may direct; and such [carrier] *dominant carrier or other regulated carrier* shall file such inventory within such reasonable time as the Commission by order shall require.

(c) The Commission may at any time require any such [carrier] *dominant carrier or other regulated carrier* to file with the Commission a statement showing the original cost at the time of dedication to the public use of all or of any part of the property owned or used by said [carrier] *dominant carrier or other regulated carrier*. For the showing of such original cost said property shall be classified, and the original cost shall be defined, in such manner as the Commission may prescribe; and if any part of such cost cannot be determined from accounting or other records, the portion of the property for which such cost cannot be determined shall be reported to the Commission; and if the Commission shall so direct, the original cost thereof shall be estimated in such manner as the Commission may prescribe. If the carrier owning the property at the time such original cost is reported shall have paid more or less than the original cost to acquire the same, the amount of such cost of acquisition, and any facts which the Commission may require in connection therewith, shall be reported with such original cost. The report made by a [carrier] *dominant carrier or other regulated carrier* under this paragraph shall show the source or sources from which the original cost reported was obtained, and such other information as to the manner in which the report was prepared, as the Commission shall require.

(d) Nothing shall be included in the original cost reported for the property of any [carrier] *dominant carrier or other regulated carrier* under paragraph (c) of this section on account of any easement, license, or franchise granted by the United States or by any State or political subdivision thereof, beyond the reasonable necessary expense lawfully incurred in obtaining such easement, license, or franchise from the public authority aforesaid, which expense shall be reported separately from all other costs in such detail as the Commission may require; and nothing shall be included in any valuation of the property of any [carrier] *dominant carrier or other regulated carrier* made by the Commission on account of any such easement, license, or franchise, beyond such reasonable necessary expense lawfully incurred as aforesaid.

(e) The Commission shall keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of [common carriers] *any dominant carrier or other regulated carrier* and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of [carrier] *dominant carrier properties or other regulated carrier* properties.

(f) For the purpose of enabling the Commission to make a valuation of any of the property of any such [carrier] *dominant carrier or other regulated carrier*, or to find the original cost of such property, or to find any other facts concerning the same which are required for use by the Commission, it shall be the duty of each such [carrier] *dominant carrier or other regu-*

lated carrier to furnish to the Commission within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and to cooperate with and aid the Commission in the work of making any such valuation or finding in such manner and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering this section shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public. The Commission, in making any such valuation, shall be free to adopt any method of valuation which shall be lawful *and consistent with the provisions of section 252(b)*.

[(g) Notwithstanding any provision of this Act the Interstate Commerce Commission, if requested to do so by the Commission, shall complete, at the earliest practicable date, such valuations of properties of carriers subject to this Act as are now in progress, and shall thereafter transfer to the Commission the records relating thereto.]

[h](*g*) Nothing in this section shall impair or diminish the powers of any State commission.

ACCOUNTS, RECORDS, AND MEMORANDA; DEPRECIATION CHARGES

SEC. [220.] *252.* (a) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by [carriers subject to this Act] *any dominant carrier or other regulated carrier*, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

[(b) The Commission shall, as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or, after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.]

(b)(1) The transitional joint board shall establish and prescribe—

(A) the classes of property used by any dominant carrier or other regulated carrier for the provision of telecommunications

services which are subject to the regulatory authority of the Commission under this title or to the regulatory authority of any State commission; and

(B) the methods by which investments in such classes of property may be recovered.

(2) The methods specified in paragraph (1)(B) may include capital recovery schedules or percentage depreciation schedules. Such methods shall—

(A) provide for the full recovery of any unrecovered amount of invested capital not later than the end of the remaining life of the property involved;

(B) permit not more than the full amount of invested capital to be recovered;

(C) for property used by a regulated carrier, include, as an allowable operating expense for ratemaking purposes, depreciation computed under any accelerated methods selected by such regulated carrier, except that (i) the initial selection shall apply only to property placed in service on or after the first day of the first calendar year which begins after the date of the enactment of the Telecommunications Act of 1980; and (ii) any subsequent changes in such selection shall apply only to property placed in service on or after the date of such selection; and

(D) for property already in service on the first day of the first calendar year which begins after the date of the enactment of the Telecommunications Act of 1980, include as an allowable operating expense for ratemaking purposes such amounts as may be necessary to recover all embedded invested capital through the use of the remaining life method of capital recovery.

(3) Any determination of the remaining life of property under paragraph (2) shall take into consideration competition, changes in technology, and remaining economic life.

(4) Upon the termination of the transitional joint board, the Commission shall refer matters arising under this subsection to a Federal-State Joint Board under section 410(c). The Commission and such Federal-State Joint Board shall have authority to establish, prescribe, implement, or change classes of property and methods of depreciation only in accordance with the foregoing provisions of this subsection.

(c) The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such **[**carriers**]** *dominant carriers or other regulated carriers*, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section.

(d) In case of failure or refusal on the part of any such **[**carrier**]** *dominant carrier or other regulated carrier* to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such [carrier] *dominant carrier or other regulated carrier* shall forfeit to the United States [the sum of $500] *an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $100,000*, for each day of the continuance of each such offense.

(e) Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such [carrier] *dominant carrier or other regulated carrier* or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the [carrier] *dominant carrier or other regulated carrier*, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than [$1,000] *$10,000* nor more than [$5,000] *$100,000* or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

(f) No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(g) After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect.

(h) The Commission may [classify carriers subject to this Act and] prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to [any carrier] *the dominant carrier or other regulated carrier* involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

TRANSACTIONS RELATING TO SERVICES, EQUIPMENT, AND SO FORTH

SEC. **[**215.**]** *253.* (a) The Commission shall examine into transactions entered into by any **[**common carrier**]** *dominant carrier or other regulated carrier* which relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such *dominant carrier or other regulated* carrier and/or which may affect the charges made or to be made and/or the *telecommunications* services rendered or to be rendered by such *dominant carrier or other regulated* carrier **[**, in wire or radio communications subject to this Act,**]** and shall report to the Congress whether any such transactions have affected or are likely to affect adversely the ability of the *dominant carrier or other regulated* carrier to render adequate *telecommunications* service to the public, or may result in any undue or unreasonable increase in charges or in the maintenance of undue or unreasonable charges for such services; and in order to fully examine into such transactions the Commission shall have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, of persons furnishing such equipment, supplies, research, services, finances, credit, or personnel. The Commission shall include in its report its recommendations for necessary legislation in connection with such transactions, and shall report specifically whether in its opinion legislation should be enacted (1) authorizing the Commission to declare any such transactions void or to permit such transactions to be carried out subject to such modification of their terms and conditions as the Commission shall deem desirable in the public interest; and/or (2) subjecting such transactions to the approval of the Commission where the person furnishing or seeking to furnish the equipment, supplies, research, service, finances, credit, or personnel is a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such *dominant carrier or other regulated* carrier; and/or (3) authorizing the Commission to require that all or any transactions of carriers involving the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such *dominant carrier or other regulated* carrier be upon competitive bids on such terms and conditions and subject to such regulations as it shall prescribe as necessary in the public interest.

(b) The Commission shall investigate the methods by which and the extent to which wire telephone companies are furnishing wire telegraph service and wire telegraph companies are furnishing wire telephone service, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

(c) The Commission shall examine all contracts of **[**common carriers subject to this Act**]** *dominant carriers or other regulated carriers* which prevent the other party thereto from dealing with **[**another common carrier subject to this Act**]** *any other such carrier*, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

ACCOUNTING SYSTEMS AND PRACTICES

SEC. 254. (a) Each dominant carrier or other regulated carrier shall maintain a system of accounting methods, procedures, and techniques (including accounts and supporting records and memoranda) which shall be established and enforced by the Commission to ensure—

(1) a proper allocation of all costs to and among telecommunications services, facilities, and products (and to and among classes of such services, facilities, and products) which—

(A) are developed, manufactured, or offered by such dominant carrier or any affiliated organization; or

(B) are developed, manufactured, or offered by any such regulated carrier or any affiliated organization and are subject to the regulatory authority of the Commission under this title; and

(2) a complete separation between—

(A) all costs related to services, facilities, and products which are developed, manufactured, or offered—

(i) by such dominant carrier, or any affiliated organization (other than the costs of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization); or

(ii) by such regulated carrier or any affiliated organization, to the extent such services, facilities, or products are subject to the regulatory authority of the Commission or to the regulatory authority of any State commission; and

(B) all costs related to services, facilities, and products which are developed, manufactured, or offered—

(i) by any fully separated subsidiary of a dominant carrier, or of any affiliated organization, or as the result of any activities which are carried out for the benefit of any fully separated subsidiary of such dominant carrier or any affiliated organization; or

(ii) by any regulated carrier or any affiliated organization, to the extent such services, facilities, or products are not subject to any regulatory authority specified in subparagraph (A)(ii).

The Commission shall establish such system not later than 2 years after the date of the enactment of the Telecommunications Act of 1980. The Commission shall consult with State commissions in establishing that portion of such system which is required in paragraph (1).

(b) The Commission shall have authority to waive any of the accounting requirements established by the Commission under subsection (a) with respect to any carrier (other than any dominant carrier).

(c)(1) The Commission shall submit an interim report to each House of the Congress not later than 18 months after the date of the

enactment of the Telecommunications Act of 1980. Such report shall include a summary of action taken by the Commission to establish the accounting system required in subsection (a), together with such other information as the Commission considers appropriate.

(2) The Commission shall submit a final report to each House of the Congress as soon as practicable after the establishment by the Commission of the accounting system required in subsection (a). Such report shall include a detailed explanation of the manner in which the accounting methods, procedures, and techniques contained in such system are intended to operate, together with such other information as the Commission considers appropriate.

NETWORK MANAGEMENT

Sec. 255. (a) Subject to the provisions of subsection (b), any carrier may engage in any meeting with any other carrier for purposes of planning or agreeing to—

(1) the design, plan (including the establishment of through routes), construction, operation, and maintenance of any network of telecommunications services or facilities;

(2) the development of technical standards applicable to such services and facilities; and

(3) any tariff for the provision of joint and through services, except that carriers shall not have any authority to meet under this section for purposes of planning or agreeing to any such tariff unless the provisions of such tariff are consistent with the requirements of section 211(c) and with the manner in which intraexchange access fees are established, and National Telecommunications Pool funds are distributed, under section 233.

(b)(1) Except as provided in paragraph (3), any meeting specified in subsection (a) shall take place after reasonable notice is given by the carriers involved to the Commission, and a representative of the Commission shall be given an opportunity to attend, or otherwise monitor, any such meeting at the time it is conducted. The Commission shall make any such notice available at the offices of the Commission for public inspection immediately upon receipt of such notice by the Commission. The failure of the Commission to exercise such authority to attend or otherwise monitor a meeting shall not impair the authority of such carriers to conduct such meeting under this section.

(2) Except as provided in paragraph (3), a transcript of each meeting shall be filed immediately with the Commission and shall be available at the offices of the Commission for public inspection not later than 30 days after the meeting involved is conducted, except that no transcript made available to the public may contain any material the disclosure of which, in the opinion of the Commission, could adversely affect the national defense and security or the emergency preparedness of the Nation.

(3) The requirements applicable to carriers in paragraph (1) and paragraph (2) shall not apply in the case of any meeting for any purpose specified in subsection (a) which relates to any particular telecommunications service or facility if the carriers involved in such

meeting are not in competition with each other with respect to the offering of such service or facility.

(c) The Commission, upon its own initiative, upon the request of any interested carrier or other person, or upon the request of any Federal agency, shall have authority to require carriers to engage in meetings for the purpose of—

(1) assuring the establishment and maintenance of appropriate networks of telecommunications services and facilities; and

(2) maintaining the national defense and security and the emergency preparedness of the Nation.

(d)(1) Nothing contained in this section shall be construed—

(A) to authorize any meeting or other conduct among carriers the purpose of which is to engage in any activity which is prohibited by the Federal antitrust laws; or

(B) to otherwise limit or affect the application of the Federal antitrust laws.

(2) For purposes of this subsection, the term "Federal antitrust laws" means—

(A) the Sherman Act (15 U.S.C. 1 et seq.), section 73 through section 77 of the Wilson Tariff Act (15 U.S.C. 8–11), the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'", approved February 12, 1913, the Clayton Act (15 U.S.C. 12 et seq.), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

(B) any law enacted after the date of the enactment of the Telecommunications Act of 1980 by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any restraint upon, or monopolization of, interstate or foreign trade or commerce.

PART D—MISCELLANEOUS

FRANKS AND PASSES

SEC. [210.] *271.* (a) Nothing in this Act or in any other provision of law shall be construed to prohibit [common] *dominant carriers or other regulated* carriers from issuing or giving franks to, exchanging franks with each other for the use of, their officers, agents, employees, and their families, or, subject to such rules as the Commission may prescribe, from issuing, giving, or exchanging franks and passes to or with [other] common carriers not subject to the provisions of this Act, for the use of their officers, agents, employees, and their families. The term "employees," as used in this section, shall include furloughed, pensioned, and superannuated employees.

(b) Nothing in this Act or in any other provision of law shall be construed to prohibit [common] *dominant carriers or other regulated* carriers from rendering to any agency of the Government free service in connection with the preparation for the national defense: *Provided*, That such free service may be rendered only in accordance with such rules and regulations as the Commission may prescribe therefor.

COPIES OF CONTRACTS TO BE FILED

SEC. [211.] *272.* (a) Every [carrier subject to this Act] *dominant carrier or other regulated carrier* shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of this Act, in relation to any traffic affected by the provisions of this Act to which it may be a party.

(b) The Commission shall have authority to require the filing of any other contracts of any *dominant carrier or other regulated* carrier, and shall also have authority to exempt any *dominant carrier or other regulated* carrier from submitting copies of such minor contracts as the Commission may determine.

INTERLOCKING DIRECTORATES—OFFICIALS DEALING IN SECURITIES

SEC. [212.] *273.* [After sixty days from the enactment of this Act] *Except as provided in section 214(c)(1)(B)*, it shall be unlawful for any person to hold the position of officer or director of more than one [carrier subject to this Act] *dominant carrier or other regulated carrier*, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby: *Provided*, That the Commission may authorize persons to hold the position of officer or director in more than one such [carrier] *dominant carrier or other regulated carrier*, without regard to the requirements of this section, where it has found that one of the two or more *dominant carriers or other regulated* carriers directly or indirectly owns more than 50 per centum of the stock of the other or others, or that 50 per centum or more of the stock of all such *dominant carriers or other regulated* carriers is directly or indirectly owned by the same person. After this section takes effect it shall be unlawful for any officer or director of any [carrier subject to this Act] *dominant carrier or other regulated carrier* to receive for his own benefit directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such *dominant carriers or other regulated* carriers, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carriers from any funds properly included in capital account.

APPLICATION OF ACT TO RECEIVERS AND TRUSTEES

SEC. [216.] *274.* The provisions of this Act shall apply to all receivers and operating trustees of carriers subject to this Act to the same extent that it applies to carriers.

ANNUAL AND OTHER REPORTS

SEC. [219.] *275.* (a) The Commission is authorized to require annual reports from all carriers subject to this Act, and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, any such carrier, to prescribe the manner in which such reports shall be made, and to require from such persons specific answers to all questions upon which the Commission may need information. Except as otherwise required by the Commission, such annual reports shall show in detail the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid therefor, and the manner of payment for the same; the dividends paid and the surplus fund, if any, the number of stockholders (and the names of the thirty largest holders of each class of stock and the amount held by each); the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the names of all officers and directors, and the amount of salary, bonus, and all other compensation paid to each; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to charges or regulations concerning charges, or agreements, arrangements, or contracts affecting the same, as the Commission may require.

(b) Such reports shall be for such twelve months' period as the Commission shall designate and shall be filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time is granted in any case by the Commission; and if any person subject to the provisions of this section shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such person shall forfeit to the United States [the sum of $100] *an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $2,500,* for each and every day it shall continue to be in default with respect thereto. The Commission may by general or special orders require any such carriers to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures above provided.

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. [221.] *276.* (a) Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other like manner, when such consolidated company would be subject to this Act, the Commission shall give reasonable notice in writing to the governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies, and to such other persons as it may deem advisable, and shall afford such parties a reasonable opportunity to submit comments on the proposal. A public hearing shall be held in all cases where a request therefor is made by a telephone company, an association of telephone companies, a State commission, or local governmental authority. If the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect; and thereupon any Act or Acts of Congress making the proposed transaction unlawful shall not apply. Nothing in this subsection shall be construed as in anywise limiting or restricting the powers of the several States to control and regulate telephone companies.

(b) Subject to the provisions of section 301, nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes [interstate] *interexchange telecommunications service* or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

(c) For the purpose of administering this Act as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone communication, and determine what property of said carrier shall be considered as used in [interstate] *interexchange telecommunications service* or foreign telephone toll service. Such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the Commission may prescribe. *The Commission shall not have any authority to carry out any functions or activities under this subsection during the period beginning on the date of the establishment of the transitional joint board and ending at the end of the period specified in section 231(i).*

(d) In making a valuation of the property of any wire telephone carrier the Commission, after making the classification authorized in this section, may in its discretion value only that part of the property of such carrier determined to be used in [interstate] *interexchange telecommunications service* or foreign telephone toll service.

CONSOLIDATION AND MERGERS OF TELEGRAPH CARRIERS

Sec. [222.] *277.* (a) As used in this section—

(1) The term "consolidation or merger" includes the legal consolidation or merger of two or more corporations, and the acquisition by a corporation through purchase, lease, or in any other manner, of the whole or any part of the property, securities, facilities, services, or business of any other corporation or corporations, or of the control thereof, in exchange for its own securities, or otherwise.

(2) The term "domestic telegraph carrier" means any common carrier by wire or radio, the major portion of whose traffic and revenues is derived from domestic telegraph operations; and such term includes a corporation owning or controlling any such common carrier.

(3) The term "international telegraph carrier" means any common carrier by wire or radio, the major portion of whose traffic and revenues is derived from international telegraph operations; and such term includes a corporation owning or controlling any such common carrier.

(4) The term "consolidated or merged carrier" means any carrier by wire or radio which acquires or operates the properties and facilities unified and integrated by consolidation or merger.

(5) The term "domestic telegraph operations" includes acceptance, transmission, reception, and delivery of record communications by wire or radio which either originate or terminate at points within the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, or Newfoundland and terminate or originate at points within the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, or Newfoundland, and includes acceptance, transmission, reception, or delivery performed within the continental United States between points of origin within and points of exit from, and between points of entry into and points of destination within, the continental United States with respect to record communications by wire or radio which either originate or terminate outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, and also includes the transmission within the continental United States of messages which both originate and terminate outside but transit through the continental United States: *Provided*, That nothing in this section shall prevent international telegraph carriers from accepting and delivering international telegraph messages in the cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States, under regulations prescribed by the Commission, and the incidental transmission or reception of the same over its own or leased lines or circuits within the continental United States.

(6) The term "international telegraph operations" includes acceptance, transmission, reception, and delivery of record communications by wire or radio which either originate or terminate at points outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, but does not include acceptance, transmission, reception, and delivery performed within the continental United States between points of origin within and points of exit from, and between points of entry into, and points of destination within, the continental United States with respect to such communications, or the transmission within the continental United States of messages which both originate and terminate outside but transmit through the continental United States.

(7) The terms "domestic telegraph properties" and "domestic telegraph facilities" mean properties and facilities, respectively, used or to be used in domestic telegraph operations.

(8) The term "employee" or "employees" (i) shall include any individual who is absent from active service because of furlough, illness,

or leave of absence, except that there shall be no obligation upon the consolidated or merged carrier to reemploy any employee who is absent because of furlough, except in accordance with the terms of his furlough, and (ii) shall not include any employee of any carrier which is a party to a consolidation or merger pursuant to this section to the extent that he is employed in any business which carrier continues to operate independently of the consolidation or merger.

(9) The term "representative" includes any individual or labor organization.

(10) The term "Continental United States" means the District of Columbia and the States of the Union[, except Hawaii].

(b)(1) It shall be lawful, upon application to and approval by the Commission as hereinafter provided, for any two or more domestic telegraph carriers to effect a consolidation or merger; and for any domestic telegraph carrier, as a part of any such consolidation or merger or thereafter, to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier which is not primarily a telegraph carrier: *Provided*, That, except as provided in paragraph (2) of this subsection, no domestic telegraph carrier shall effect a consolidation or merger with any international telegraph carrier, and no international telegraph carrier shall effect a consolidation or merger with any domestic telegraph carrier.

(2) As a part of any such consolidation or merger, or thereafter upon application to and approval by the Commission as hereinafter provided, the consolidated or merged carrier may acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any international telegraph carrier.

(c)(1) Whenever any consolidation or merger is proposed under subsection (b) of this section, the telegraph carrier or telegraph carriers seeking authority therefor shall submit an application to the Commission, and thereupon the Commission shall order a public hearing to be held with respect to such application and shall give reasonable notice thereof, in writing, and an opportunity to be heard, to the Governor of each of the States in which any of the physical property involved in such proposed consolidation or merger is situated, to the Secretary of State, the Secretary of Defense, the Attorney General of the United States, representatives of employees where represented by bargaining representatives known to the Commission, and to such other persons as the Commission may deem advisable. If, after such public hearing, the Commission finds that the proposed consolidation or merger, or an amended proposal for consolidation or merger, (1) is authorized by subsection (a) of this section, (2) conforms to all other applicable provisions of this section, (3) is in the public interest, the Commission shall enter an order approving and authorizing such consolidation or merger, and thereupon any law or laws making consolidations and mergers unlawful shall not apply to the proposed consolidation or merger. In finding whether any proposed consolidation or merger is in the public interest, the Commission shall give due consideration, among other things, to the financial soundness of the carrier resulting from such consolidation or merger.

(2) Any proposed consolidation or merger of domestic telegraph carriers shall provide for the divestment of the international telegraph operations theretofore carried on by any party to the consolidation or merger, within a reasonable time to be fixed by the Commission, after the consideration for the property to be divested is found by the Commission to be commensurate with its value, and as soon as the legal obligations, if any, of the carrier to be so divested will permit. The Commission shall require at the time of the approval of such consolidation or merger that any such party exercise due diligence in bringing about such divestment as promptly as it reasonably can.

(d) No proposed consolidation or merger of telegraph carriers pursuant to this section shall be approved by the Commission if, as a result of such consolidation or merger, more than one-fifth of the capital stock of any carrier which is subject to the jurisdiction of the Commission will be owned or controlled, or voted, directly or indirectly, (1) by any alien or the representative of any alien, (2) by any foreign government or the representative thereof, (3) by any corporation organized under the laws of any foreign government, or (4) by any corporation of which any officer or director is an alien, or of which more than one-fifth of the capital stock is owned or controlled, or voted, directly or indirectly, by any alien or the representative of any alien, by any foreign government or the representative thereof, or by any corporation organized under the laws of a foreign government.

(e)(1) In the case of any consolidation or merger of telegraph carriers pursuant to this section, the consolidated or merged carrier shall, except as provided in paragraph (2) of this subsection, distribute among the international telegraph carriers, telegraph traffic by wire or radio destined to points without the continental United States, and divide the charges for such traffic, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve: *Provided, however,* That in case the interested carriers shall fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or merger a formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection.

(2) In the case of any consolidation or merger pursuant to this section of telegraph carriers which, immediately prior to such consolidation or merger, interchanged traffic with telegraph carriers in a contiguous foreign country, the consolidated or merged carrier shall distribute among such foreign telegraph carriers, telegraph traffic by wire or radio destined to points in such contiguous foreign country and shall divide the charges therefor, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve: *Provided, however,* That in case the interested carriers should fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or

merger or formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection. As used in this paragraph, the term "contiguous foreign country" means Canada, Mexico, or Newfoundland.

(3) Whenever, upon a complaint or upon its own initiative, and after a full hearing, the Commission finds that any such distribution of telegraph traffic among telegraph carriers, or any such division of charges for such traffic, which is being made or which is proposed to be made, is or will be unjust, unreasonable, or inequitable, or not in the public interest, the Commission shall by order prescribe the distribution of such telegraph traffic, or the division of charges therefor, which will be just, reasonable, equitable, and in the public interest, and will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers.

(4) For the purposes of this subsection, the international telegraph operations of any domestic telegraph carrier shall be considered to be the operations of an independent international telegraph carrier, and the domestic telegraph operations of any international telegraph carrier shall be considered to be the operations of an independent domestic telegraph carrier.

(f) (1) Each employee of any carrier which is party to a consolidation or merger pursuant to this section who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began on or before March 1, 1941, shall be employed by the carrier resulting from such consolidation or merger for a period of not less than four years from the date of the approval of such consolidation or merger, and during such period no such employee shall, without his consent, have his compensation reduced or be assigned to work which is inconsistent with his past training and experience in the telegraph industry.

(2) If any employee of any carrier which is a party to any such consolidation or merger, who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began after March 1, 1941, is discharged as a consequence of such consolidation or merger by the carrier resulting therefrom, within four years from the date of approval of the consolidation or merger, such carrier shall pay such employee at the time he is discharged severance pay in cash equal to the amount of salary or compensation he would have received during the full four-week period immediately preceding such discharge at the rate of compensation or salary payable to him during such period, multiplied by the number of years he has been continuously employed immediately preceding such discharge by one or another of such carriers who were parties to such consolidation or merger, but in no case shall any such employee receive less severance pay than the amount of salary or compensation he would have received at such rate if he were employed during such full four-week period: *Provided, however*, That such severance pay shall not be required to be paid to any employee who is discharged after the expiration of a period, following the date of approval of the consolidation or merger, equal to the aggregate period

during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger.

(3) For a period of four years after the date of approval of any such consolidation or merger, any employee of any carrier which is a party to such consolidation merger who was such an employee on such date of approval, and who is discharged as a result of such consolidation or merger, shall have a preferential hiring and employment status for any position for which he is qualified by training and experience over any person who has not theretofore been an employee of any such carrier.

(4) If any employee is transferred from one community to another, as a result of any such consolidation or merger, the carrier resulting therefrom shall pay, in addition to such employee's regular compensation as an employee of such carrier, the actual traveling expenses of such employee and his family, including the cost of packing, crating, drayage, and transportation of household goods and personal effects.

(5) In the case of any consolidation or merger pursuant to this section, the consolidated or merged carrier shall accord to every employee or former employee, or representative or beneficiary of any employee or former employee, of any carrier which is a party to such consolidation or merger, the same pension, health, disability, or death insurance benefits, as were provided for prior to the date of approval of the consolidation or merger, under any agreement or plan of any carrier which is a party to the consolidation or merger which covered the greatest number of the employees affected by the consolidation or merger; except that in any case in which, prior to the date of approval of the consolidation or merger, an individual has exercised his right of retirement, or any right to health, disability, or death insurance benefits has accrued, under any agreement or plan of any carrier which is a party to the consolidation or merger, pension, health, disability, or death insurance benefits, as the case may be, shall be accorded in conformity with the agreement or plan under which such individual exercised such right of retirement or under which such right to benefits accrued. For purposes of determining and according the rights and benefits specified in this paragraph, any period spent in the employ of the carrier of which such individual was an employee at the time of the consolidation or merger shall be considered to have been spent in the employ of the consolidated or merged carrier. The application for approval of any consolidation or merger under this section shall contain a guaranty by the proposed consolidated carrier that there will be no impairment of any of the rights or benefits specified in this paragraph.

(6) Any employee who, since August 27, 1940, has left a position other than a temporary position, in the employ of any carrier which is a party to any such consolidation or merger, for the purpose of entering the military or naval forces of the United States, shall be considered to have been in the employ of such carrier during the time he is a member of such forces, and, upon making an application for employment, with the consolidated or merged carrier within forty days from the time he is relieved from service in any of such forces under honorable conditions, such former employee shall be employed by the

consolidated or merged carrier and entitled to the benefits to which he would have been entitled if he had been employed by one of such carriers during all of such period of service with such forces; except that this paragraph shall not require the consolidated or merged carrier, in the case of any such individual, to pay compensation, or to accord health, disability, or death insurance benefits, for the period during which he was a member of such forces. If any such former employee is disabled and because of such disability is no longer qualified to perform the duties of his former position but otherwise meets the requirements for employment, he shall be given such available employment at an appropriate rate of compensation as he is able to perform and to which his service credit shall entitle him.

(7) No employee of any carrier which is a party to any such consolidation or merger shall, without his consent, have his compensation reduced, or (except as provided in paragraph (2) and paragraph (8) of this subsection) be discharged or furloughed during the four-year period after the date of approval of such consolidation or merger. No such employee shall, without his consent, have his compensation reduced, or be discharged or furloughed, in contemplation of such consolidation and merger, during the six-month period immediately preceding such approval.

(8) Nothing contained in this subsection shall be construed to prevent the discharge of any employee for insubordination, incompetency, or any other similar cause.

(9) All employees of any carrier resulting from any such consolidation or merger, with respect to their hours of employment, shall retain the rights provided by any collective bargaining agreement in force and effect upon the date of approval of such consolidation or merger until such agreement is terminated, executed, or superseded. Notwithstanding any other provision of this Act, any agreement not prohibited by law pertaining to the protection of employees may hereafter be entered into by such consolidated or merged carrier and the duly authorized representative or representatives of its employees selected according to existing law.

(10) For purposes of enforcing or protection of rights, privileges, and immunities granted or guaranteed under this subsection, the employees of any such consolidated or merged carrier shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by that Act; and the National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act.

(11) Nothing contained in this subsection shall apply to any employee of any carrier which is a party to any such consolidation or merger whose compensation is at the rate of more than $5,000 per annum.

(12) Notwithstanding the provisions of paragraphs (1) and (7), the protection afforded therein for the period of four years from the date of approval of the consolidation or merger shall not, in the case of any particular employee, continue for a longer period, following

such date of approval, than the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger. As used in paragraphs (1), (2), and (7), the term "compensation" shall not include compensation attributable to overtime not guaranteed by collective bargaining agreements.

(g)(1) The authority of any carrier to provide any service or operate any facilities which it is authorized to provide or operate on the date of the enactment of the Telecommunications Act of 1980 shall not be altered or otherwise affected by the inclusion of the State of Hawaii in the definition of "continental United States". Such inclusion shall not restrict or impair the eligibility of any carrier, after such date of enactment, for new or additional authority.

(2) Whenever, upon complaint or upon its own initiative, and after opportunity for a hearing, the Commission finds that any charge, classification, regulation, or practice relating to intercarrier arrangements of any carrier serving the State of Hawaii is or will be unjust, unreasonable, discriminatory, or not in the public interest, the Commission shall determine and prescribe a charge, classification, regulation, practice, or other remedy which is or will be just, reasonable, nondiscriminatory, and in the public interest, and which shall be followed after the date of such action by the Commission.

PROHIBITION OF CERTAIN TELEPHONE CALLS

SEC. **[**223.**]** *278.* Whoever—

(1) **[**in the District of Columbia or in interstate or foreign communication by means of telephone**]** *by means of telephone in the District of Columbia, between local exchange areas, or between a local exchange area and a point in a foreign nation—*

(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent;

(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number;

(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(2) knowingly permits any telephone under his control to be used for any purpose prohibited by this section,

shall be fined not more than $500 or imprisoned not more than six months, or both.

REGULATION OF POLE ATTACHMENTS

SEC. **[**224.**]** *279.* (a) As used in this section:

(1) The term utility means any person whose rates or charges are regulated by the Federal Government or a State and who owns or

controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for [wire communication] *the provision of telecommunications service.* Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(b)(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of title III of the Communications Act of 1934, as amended.

(2) Within 180 days from the date of enactment of this section the Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c)(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

(d)(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(e) Upon the expiration of the 5-year period that begins on the date of enactment of this Act the provisions of subsection (d) of this section shall cease to have any effect.

NATIONAL DEFENSE AND EMERGENCY PREPAREDNESS

SEC. 280. (a) The President shall have authority to require any carrier subject to the provisions of this Act to furnish telecommunications services or facilities to any Federal agency if the President determines that—

(1) the provision of such services or facilities is necessary or appropriate to promote the national defense and security or the emergency preparedness of the Nation;

(2)(A) there is a threat of war with a foreign nation, the Nation is at war with a foreign nation, or there exists a state of public peril or disaster or other national emergency; or

(B) in order to provide for the national defense and security or the emergency preparedness of the Nation, there is an immediate need for such services and facilities, and such need cannot be met through reliance upon any other source of supply; and

(3) all other means of obtaining such services and facilities have been exhausted.

(b) The provisions of section 606(e) shall apply in the case of any determination made by the President under this section.

PUBLIC PARTICIPATION IN COMMISSION PROCEEDINGS AND TRANSITIONAL JOINT BOARD PROCEEDINGS

SEC. 281. (a) The Commission is authorized to provide financial assistance for the direct costs of participation (including the costs of attorneys and expert witnesses) by any person in any proceeding of the Commission under this title in which there may be public participation pursuant to any Federal law, or pursuant to any rule or practice of the Commission. Financial assistance is authorized in any case in which—

(1) the person applying for assistance represents an interest—

(A) which would not otherwise be represented adequately in such proceeding; and

(B) representation of which is necessary for a fair disposition of the proceeding; and

(2) the person applying for such assistance does not have sufficient resources available to participate effectively in the proceeding in the absence of financial assistance.

(b) Upon approving an application for financial assistance under this section, the Commission shall enter into a written agreement with the person who submitted the application. Such agreement shall—

(1) specify the nature and extent of the representation to be provided by the person during the proceeding;

(2) include procedures for examination and review by the Commission of the expenditures made by the person to provide such representation; and

(3) specify the extent to which the financial assistance is to be provided in the form of advance payments.

(c) The Commission shall not provide assistance under this section of more than $75,000 to any person for any fiscal year or for any proceeding.

(d) Any person who receives financial assistance under this section shall be liable for repayment of all or part of such assistance whenever the Commission determines that—

(1) such person has not provided the representation for which financial assistance was made available; or

(2) such person acted in a manner demonstrating bad faith toward the Commission or another participant in the proceeding.

(e) Not later than 90 days after the date of the enactment of the Telecommunications Act of 1980, the Commission shall propose and publish for comment rules to carry out the provisions of this section. The Commission shall adopt and put into effect such rules not later than 180 days after such date of enactment.

(f) Any person seeking judicial review of any determination made by the Commission under this section regarding financial assistance may petition for such review after the Commission takes final action in the proceeding with respect to which such determination regarding financial assistance is made. No such petition may be brought before such final action is taken by the Commission.

(g)(1) The aggregate amount of funds available for the payment of compensation to small business concerns in any one of the fiscal years for which funds are authorized to be appropriated under this section shall be equal to 25 percent of the aggregate amount of funds appropriated under this section for such fiscal year.

(2) For purposes of this subsection, the term "small business concern" means any private business, organization, or other enterprise which employs not more than 25 employees.

(h) The provisions of this section shall apply to any proceeding conducted by the transitional joint board. The transitional joint board shall comply with the requirements of subsection (e).

(i) There is authorized to be appropriated for the purpose of carrying out the provisions of this section with regard to proceedings before the Commission $750,000 for each of the fiscal years 1981, 1982, 1983, and 1984.

(j) There is authorized to be appropriated for the purpose of carrying out the provisions of this section with regard to proceedings before the transitional joint board $500,000 for each of the fiscal years 1981, 1982, 1983, and 1984.

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

GENERAL POWERS OF THE COMMISSION

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) * * *

* * * * * * *

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international [radio or wire communications] *telecommunications* treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

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TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

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MANDAMUS TO COMPEL FURNISHING OF FACILITIES

SEC. 406. The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a [carrier subject to this Act] *dominant carrier or other regulated carrier*, of any of the provisions of this Act which prevent the relator from receiving [service in interstate or foreign communication by wire or radio] *any interexchange telecommunications service or any foreign transmission* or *any service* in interstate or foreign transmission of energy by radio, from said carrier at the same charges, or upon terms or conditions as favorable as those given by said carrier for like [communication] *telecommunications* or transmission under similar conditions to any other person, to issue a writ or writs of mandamus against said carrier commanding such carrier to furnish facilities for such [communication] *telecommunications* or transmission to the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper pending the determination of the question of fact: *Provided further*, That the remedy hereby given by writ of mandamus shall be cumulative and shall not be held to exclude or interfere with other remedies provided by this Act.

PETITION FOR ENFORCEMENT OF ORDER FOR PAYMENT OF MONEY

SEC. 407. If a *dominant carrier or other regulated* carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the *dominant carrier or other regulated* carrier, or through which the line of the *dominant carrier or other regulated* carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated, except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the cost of the suit.

* * * * * * *

USE OF JOINT BOARDS—COOPERATION WITH STATE COMMISSIONS

SEC. 410. (a) Except as provided in section 409, the Commission may refer any matter arising in the administration of this Act to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the [wire or radio communication] *provision of telecommunications service* affected by or involved in the proceeding takes place or is proposed. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 11 of the Administrative Procedure Act, designated by the Commission, and shall be subject to the same duties and obligations. The action of a joint board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion to reject any nominee. Joint Board members shall receive such allowances for expenses as the Commission shall provide.

(b) The Commission may confer with any State commission having regulatory jurisdiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized under such rules and regulations as it shall prescribe to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) [The] *After the termination of the transitional joint board under section 231(i), the* Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between [interstate and intrastate operations] *interexchange telecommunications service and intraexchange telecommunications service*, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this Act, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, power, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of the four State commissioners nominated by the national organization of the State commissioners, as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act, and approved by the Commission, The Chairman of the Commission, or other Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.

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DOCUMENTS FILED TO BE PUBLIC RECORDS—USE IN PROCEEDINGS

SEC. 412. The copies of schedules of charges, classifications, and of all contracts, agreements, and arrangements between [common carriers] *dominant carriers and other regulated carriers* filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of [carriers] *dominant carriers, other regulated carriers*, and other persons made to the Commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the Secretary, under the Commission's seal, shall be received in evidence with like effect as the originals: *Provided*, That the Commission may, if the public interest will be served thereby, keep confidential any contract, agreement, or arrangement relating to [foreign wire or radio communication] *foreign transmissions* when the publication of such contract, agreement, or arrangement would place American communication companies at a disadvantage in meeting the competition of foreign communication companies.

DESIGNATION OF AGENT FOR SERVICE

SEC. 413. It shall be the duty of every *dominant carrier or other regulated* carrier [subject to this Act], within sixty days after the taking effect of this Act, to designate in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and requirements of the Commission may be made for and on behalf of said *dominant carrier or other regulated* carrier in any proceeding or suit pending before the Commission, and to file such designation in the office of the secretary of the Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and process and orders, decisions, and requirements of the Commission may be made upon such *dominant carrier or other regulated* carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the District of Columbia, with like effect as if made personally upon such *dominant carrier or other regulated* carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the office of the secretary of the Commission.

* * * * * * *

LIMITATIONS AS TO ACTIONS

SEC. 415. (a) All actions at law by *dominant carriers or other regulated* carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after.

(b) All complaints against *dominant carriers or other regulated* carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section.

(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against *dominant carriers or other regulated* carriers within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include two years from the time notice in writing is given by the *dominant carrier or other regulated* carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the period of limitation in subsection (b) or (c) a *dominant carrier or other regulated* carrier begins action under subsection (a) for recovery of lawful charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the *dominant carrier or other regulated* carrier.

(e) The cause of action in respect of the transmission of a message shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the *dominant carrier or other regulated* carrier, and not after.

(f) A petition of the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission.

PROVISIONS RELATING TO ORDERS

SEC. 416. (a) Every order of the Commission shall be forthwith served upon the designated agent of the [carrier] *dominant carrier or other regulated carrier involved* in the city of Washington or in such other manner as may be provided by law.

(b) Except as otherwise provided in this Act, the Commission is hereby authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

(c) It shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect.

TITLE V—PENAL PROVISIONS—FORFEITURES

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SEC. 502. Any person who willfully and knowingly violates any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this Act, or any rule, regulation, restriction, or condition made or imposed by any international [radio or wire communications] *telecommunications* treaty or convention, or regulations annexed thereto, to which the United States is or may hereafter become a party, shall, in addition to any other penalties provided by law, be punished, upon conviction thereof, by a fine of not more than $500 for each and every day during which such offense occurs.

SEC. 503. (a) Any person who shall deliver messages for [interstate or] *transmission between local exchange areas or for* foreign transmission to any *dominant carrier or other regulated* carrier, or for whom, as sender or receiver, any such *dominant carrier or other regulated* carrier shall transmit any [interstate or foreign wire or radio] *interexchange telecommunications or foreign* communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such [common carrier] *dominant carrier or other regulated carrier* any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this Act, shall in addition to any other penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted, for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or 509(a) of this Act; or

(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 507 of this Act.

(2) The amount of any forfeiture penalty determined under this subsection shall not exceed *$5,000 for each violation, in the case of a*

dominant carrier or other regulated carrier, or $2,000 for each violation, *in the case of any other person.* Each day of a continuing violation shall constitute a separate offense, but the total forfeiture penalty which may be imposed under this subsection, for acts or omissions described in paragraph (1) of this subsection and set forth in the notice or the notice of apparent liability issued under this subsection, shall not exceed—

(*A*) *$500,000, if the violator is a dominant carrier or other regulated carrier;*

[(A)**]** (*B*) $20,000, if the violator is (i) a common carrier subject to the provisions of this Act (*other than a dominant carrier or other regulated carrier*), (ii) a broadcast station licensee or permittee, or (iii) a cable television operator; or

[(B)**]** (*C*) $5,000, in any case not covered by subparagraph (A) *or subparagraph* (*B*).

The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

PROVISIONS RELATING TO FORFEITURES

SEC. 504. (a) * * *

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(*d*) *In any case in which a carrier is required to pay any forfeiture penalty under any provision of this Act, such forfeiture penalty shall not be allowed as an operating expense for ratemaking purposes.*

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TITLE VI—MISCELLANEOUS PROVISIONS

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UNAUTHORIZED PUBLICATION OF COMMUNICATIONS

SEC. 605. Except as authorized by chapter 119, title 18, United States Code, no person receiving, assisting in receiving, transmitting or assisting in transmitting, any [interstate or foreign communication by wire or radio] ***telecommunications between local exchange areas, or between a local exchange area and any point in a foreign nation,*** **shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such [communication]** *telecommunication* **to its destination, (3) to proper accounting or distributing officers of the various communciating centers over which the [communication]** ***telecommunication*** **may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not**

being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is broadcast or transmitted by amateurs or others for the use of the general public, or which relates to ships in distress.

WAR EMERGENCY—POWERS OF PRESIDENT

SEC. 606. (a) * * *

(b) It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding [interstate or foreign communication by radio or wire] *telecommunications between local exchange areas, or between a local exchange area and any point in a foreign nation.* The President is hereby authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of [communication] *telecommunications*: *Provided*, That nothing in this section shall be construed to repeal, modify, or affect either section 6 or section 20 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

* * * * * * *

(d) Upon proclamation by the President that there exists a state or threat of war involving the United States, the President, if he deems it necessary in the interest of the national security and defense, may, during a period ending not later than six months after the termination of such state or threat of war and not later than such earlier date as the Congress by concurrent resolution may designate (1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, (2) cause the closing of any *telecommunications* facility or station [for wire communciation] and the removal therefrom of its apparatus and equipment, or (3) authorize the use or control of any such facility or station and its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

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INTERNAL REVENUE CODE OF 1954

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SUBTITLE A—INCOME TAXES

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART IV—CREDITS AGAINST TAX

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Subpart B—Rules for Computing Credit for Investment in Certain Depreciable Property

SEC. 46. AMOUNT OF CREDIT.

(a) GENERAL RULE.—

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(c) QUALIFIED INVESTMENT.—

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(3) PUBLIC UTILITY PROPERTY.—

(A) To the extent that the credit allowed by section 38 with respect to any public utility property is determined at the rate of 7 percent, in the case of any property which is public utility property, the amount of the qualified investment shall be 4/7 of the amount determined under paragraph (1). The preceding sentence shall not apply to purposes of applying the energy percentage.

(B) For purposes of subparagraph (A), the term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(i) electrical energy, water, or sewage disposal services,

(ii) gas through a local distribution system, or

(iii) telephone service, telegraph service by means of domestic telegraph operations (as defined in section **[**222(a)(5)**]** *277(a)(5)* of the Communications Act of 1934, as amended**[**; 47 U.S.C. 222(a)(5)**]**); or other communication services (other than international telegraph service),

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof. Such term also means communication property of the type used by persons engaged in providing telephone or microwave communication services to which clause (iii)

applies, if such property is used predominantly for communication purposes.

(C) In the case of any interest in a submarine cable circuit used to furnish telegraph service between the United States and a point outside the United States of a taxpayer engaged in furnishing international telegraph service (if the rates for such furnishing have been established or approved by a governmental unit, agency, instrumentality, commission, or similar body described in subparagraph (B)), the qualified investment shall not exceed the qualified investment attributable to so much of the interest of the taxpayer in the circuit as does not exceed 50 percent of all interests in the circuit.

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COMMUNICATIONS SATELLITE ACT OF 1962

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TITLE II—FEDERAL COORDINATION, PLANNING, AND REGULATION

IMPLEMENTATION OF POLICY

SEC. 201. In order to achieve the objectives and to carry out the purposes of this Act—

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(c) the Federal Communications Commission, in its administration of the provisions of the Communications Act of 1934, as amended, and as supplemented by this Act, shall—

* * * * * * *

(3) in any case where the Secretary of State, after obtaining the advice of the Administration, as to technical feasibility has advised that commercial communication to a particular foreign point by means of the communications satellite system and satellite terminal stations should be established in the national interest, institute forthwith appropriate proceedings under section [214(d)] *215(e)* of the Communications Act of 1934, as amended, to require the establishment of such communication by the corporation and the appropriate common carrier or carriers;

* * * * * * *

(10) require, in accordance with the procedural requirements of section [214] *215* of the Communications Act of 1934, as amended, that additions be made by the corporation or carriers with respect to facilities of the system or satellite terminal stations where such additions would serve the public interest, convenience, and necessity; and

* * * * * * *

DISSENTING VIEWS OF REPRESENTATIVE MAGUIRE

Every Member of Congress wants to make a contribution to the reduction of those market conditions which contribute to inflation. One key area in this battle is monopoly pricing. According to a Senate Judiciary Committee report prepared during the consideration of the Illinois Brick Bill, consumers pay an additional $150 billion per year because of anti-trust violations. The Federal government contributes to this situation when its regulatory policies frustrate free market entry and flexible pricing strategies which can lower costs to consumers. We have responded, in this inflationary period, by deregulating the airline and trucking industries. The House is slowly taking steps toward the deregulation of the railroads. Now, the Interstate and Foreign Commerce Committee is asking the Members of the House to take a similar stand and deregulate the telecommunications industry. As a Member of the Committee, I will urge the House to oppose this legislation. It will result in less, not more, competition.

H.R. 6121, the Telecommunications Act of 1980, is a terribly complex bill. To reduce the legislation to a few paragraphs is in of itself difficult and probably does an injustice to the drafters. The nub of the situation is this: In 1956, the Department of Justice agreed to discontinue its efforts to divest the American Telephone and Telegraph Company ("AT&T") of Western Electric when AT&T submitted a consent agreement to the District Court in New Jersey. The Consent Decree restricted the telephone company to offering telecommunications (as opposed to data) services and required AT&T to offer telecommunications services solely on a regulated basis. AT&T agreed to observe these restrictions which it wrote *for perpetuity.*

The Consent Decree, with its antiquated distinction between "data" and "telecommunications," and the Communications Act of 1934, which prevents the Federal Communications Commission from using regulatory discretion to forebear from regulation, do need revision. Because the line between data and communications is blurred, competitors of AT&T run the risk of devising equipment which, because it can communicate, must be regulated. The Commission, as I have noted, simply does not have the flexibility to forebear from ratemaking, entry and exit regulation, and time-consuming rulemaking procedures which are often unwarranted. It is clear that legislation is needed to revise the regulatory structure of this industry.

The important issue which Congress must confront, however, is the treatment of AT&T, the world's largest corporation, a company with over $140 billion in assets. Con we deregulate this company and write safeguards so that competition in the telecommunications industry will flourish?

H.R. 6121 proposes allowing AT&T to escape from the constraints of the Consent Decree. The legislation would allow the company to sell computer equipment, for example. Computer equipment, or "services incidental to telecommunications," was a proscribed offering for AT&T under the Decree. Also, there are telephone services which go beyond two-way, switched voice, communications—the residential telephone services which our citizens enjoy. These "non-basic" services, like private line service which many businesses use, could be deregulated under the bill. But for AT&T to offer services incidental to telecommunications or non-basic services, the bill proposes that AT&T would have to form a separate subsidiary. This is the principle competitive safeguard under the legislation.

Why a separate subsidiary? Quite properly, the proposed law seeks to prevent residential ratepayers from subsidizing the competitive offerings which AT&T will be permitted to sell on a deregulated basis. This requirement is intended to protect consumers from inflated bills and to protect Bell's competitors from facing an underpriced product in the marketplace. To insure that there is a strict separation between the competitive activities of Bell and its monopoly phone service operations, the legislation requires AT&T to establish a fully separated subsidiary.

Herein lies the problem. The fully separated subsidiary isn't separate. The bill is flawed in that the protections against cross-subsidies are inadequate, illusory, or in some cases overlooked. Without these protections, our deregulation bill will spawn *less* competition and higher prices.

Here are some examples of how the cross-subsidies will flow. AT&T currently enjoys a 9% effective tax rate on U.S. income. The bill permits AT&T and its "fully separated subsidiary" to file consolidated tax returns. By doing so, the subsidiary will enjoy a tax advantage which its competitors—paying a 46% marginal tax rate—will not have. When COMSAT formed its subsidiary, COMSAT General, it was proscribed by the FCC from endorsing the new firm's corporate paper. The Commission's thinking was that a separated firm should have to go to the money markets and compete for capital on an equal footing with its competitors. H.R. 6121 contains no such prohibition and thus, the fully separated subsidiary will be able to enter the capital markets with AT&T's endorsement. (What's more, the ban on cross-subsidy would be circumvented if the subsidiary defaulted on its corporate paper and AT&T, and its monopoly ratepayers, had to make good on the commitments sold by the subsidiary.)

In addition to the structural barriers, deficient as they are, an FCC accounting system is to be established which is supposed to be able to track the flow of funds and protect against cross-subsidization by AT&T. The Commission is given two years to establish an accounting system that is adequate to enforce this provision. The bill does not, however, prevent AT&T from getting the subsidiary into competitive markets prior to the completion by the FCC of the accounting system. Thus, precisely at the period where the accounting system is needed, at the beginning of the competitive life of the subsidiary, the FCC may not have the tools to guard against anti-competitive financing by AT&T. It should also be pointed out that on November 13, 1979, the GAO reported in "Outlook Dim for Revised Accounting System Needed for Changing Telephone Industry," that the FCC was inept in its implementation of the current system of accounts.

In its filing before the FCC, regarding the Commission's *Inquiry into Cellular Communications Services*, the Department of Justice said:

> It is clear, however, that the separate subsidiaries concept is likely to have a *de minimus* impact on removing incentives to the exercise of market power . . . 'If the parent has an incentive to exercise its market power to the disadvantage of consumers and competitors in the absence of a separate subsidiary, it has the same incentive to so after one is required.'

This was in response to a proposal by the Commission that the offerors of cellular radio, if they were providers of regulated common carrier service, would have to do so through a separated subsidiary.

Just on the basis of the adequacy of the separation between the subsidiary and AT&T, it is clear that it is a misnomer to refer to the new entity as a "fully separate subsidiary." The new firm simply retains too many ties, both direct and indirect, for that term to have any validity whatever. If this bill is enacted, all consumers of telecommunications services will suffer because their monthly phone bills will rise. Equally important, the growing, innovative, and thriving firms—against which AT&T and its deregulated subsidiary will compete—will suffer from the anti-competitive and theoretically proscribed subsidies enjoyed by the subsidiary. And, finally, our economy will suffer because competition, that market condition which we all seek, will be diminished, if not eliminated, from the telecommunications field.

It is worth noting that an orderly alternative existed prior to the Committee's consideration of the bill. One of the provisions of the Decree retains the jurisdiction in the District Court, where the Consent Decree was approved, to which the parties may apply at any time for modification of the Decree. While such an agreement was being negotiated, Congress could move to deregulate the non-dominant firms insofar as we thought it wise to do so. For example, we could loosen the restrictions on the private line services for flexibility in pricing or an elimination of tariffs altogether. This would resemble the model we chose to apply in prior deregulation bills which won acclaim from consumers and industry representatives alike. And there is some logic in deregulating competitive firms while retaining rate regulation over the monopolist in the industry.

Some may argue, in terms of equity, that revising the Communications Act as it applies to the regulation of competitors, and retaining a hold on AT&T, is unfair. But that is how our anti-trust laws often operate in dealing with monopoly power in a given market. Judge Hoffman, in rejecting the modification of the now-famous Meat Packer Consent Decree, said:

> It has been said that the Decree itself offends the policies of the anti-trust laws since it restrains lawful competition by the defendants. The point illustrates one of the many paradoxes of the Sherman Act, that it sometimes is necessary to restrict competition in order to preserve it . . . The Decree therefore operates as a restraint and a fetter to preserve the balance of competitive power. (*United States* v. *Swift and Co.*, 180 F. Supp. 885, 912, (N.D. Ill., 1960).).

The logic of this position has not escaped our distinguished colleague Chairman Peter Rodino of the House Judiciary Committee. He has written Speaker O'Neill urging that his Committee be granted sequential referral of H.R. 6121 so that the Judiciary Committee, which after all has jurisdiction over Consent Decree agreements, can ponder the issues raised by the legislation. Chairman Rodino has acted courageously, properly and in defense of the sanctity of the anti-trust statutes by doing so. He and his Committee should decide if H.R. 6121 needs to be modified, especially in terms of delaying the deregulation of AT&T, without destroying the important deregulatory nature of the bill and its treatment of the competitors in the telecommunications field. This would be the appropriate course.

Our search for a less-regulated, more competitive economy need not be restricted to the three transportation sectors. Telecommunications, in its time, can be deregulated. It will be deregulated and consumers and the business community will benefit greatly. H.R. 6121, however, is the wrong vehicle if we are genuinely committed to the competitive model. Unless the Judiciary Committee is able to modify the legislation along the lines I have outlined, it should be defeated and considered anew in the next session of Congress.

ANDREW MAGUIRE.

DISSENTING VIEWS OF REPRESENTATIVES MARKEY, MATSUI, SCHEUER, ECKHARDT, MOTTL, AND MAGUIRE

Our opposition to the reporting of H.R. 6121 is founded on our belief that the enactment of this legislation is inimical to the establishment and preservation of a fair and competitive telecommunications industry. Although the legislation improves upon some aspects of the 1934 Communications Act, we have concluded that in its totality, H.R. 6121 is so seriously flawed as to ensure anticompetitive and anticonsumer effects. It does not deserve the support of the Committee.

Furthermore, we believe that it is neither appropriate nor necessary at the present time to adopt such sweeping legislation in order to promote meaningful competition. We are concerned about the possible adverse impact H.R. 6121 will have on the relief sought by the Department of Justice in its pending antitrust litigation against the American Telephone and Telegraph Company. We anticipate that arguments will be made that Congressional ratification of AT&T's vertically integrated structure, as provided for by this legislation, constitutes a pre-emption of the federal court's equitable powers to order further structural reorganization. Although an erroneous construction of Congressional intent, the possibility of such an argument cannot be ignored. The federal courts must not be hampered nor constrained in the exercise of their independent judgment as to the appropriate relief in the instant case. With the case scheduled to go to trial in a matter of months, we must not risk harming the Justice Department's position in this pending litigation. Congress is not confronted with a crisis situation in which urgency must be the overriding consideration. We must proceed with caution.

For purpose of the record, we want to stress that we are proponents of free enterprise and strongly endorse the concept of full and fair competition. We support the general hypothesis that both business and consumers are best served when all parties are permitted to compete freely and without undue regulation. Yet these principles cannot, and should not, be viewed merely in a vacuum. The true impact, therefore, of H.R. 6121 must be evaluated in the context of the actual marketplace conditions into which this legislation proposes to intervene. For the reasons contained herein, we have concluded that insufficient attention has been focused in H.R. 6121 upon the marketplace and upon the safeguards necessary to assure competition and to promote the public interest. The pro-competition policy allegedly set forth in H.R. 6121 is, we fear, more illusory than real.

CURRENT MARKETPLACE ANALYSIS

Proponents of H.R. 6121 defend this extraordinarily complex and lengthy bill as an absolute necessity if the American people are to benefit from competition and innovation in the provision of telecommunications services, telecommunications equipment, and information services. A review of the facts, however, demonstrates beyond question that competition and innovation are already flourishing in these markets. Such a review also demonstrates that the Federal Communications Commission has done much to promote competition, and that only very minor changes in the 1934 Communication Act would serve to confirm the Commission's authority to continue its deregulatory initiatives.

The data processing services industry, from which AT&T is excluded by the 1956 Consent Decree, is intensely competitive. Anyone who peruses the Yellow Pages can easily appreciate the diversity, both in terms of size and the services they provide, of the industry's many thousand participants. The data processing services industry has prospered under a regime of vigorous competition wherein innovation is a daily fact of life.

Competition in the terminal equipment industry has taken a somewhat different path. The competitive gains that have been made in this industry have been achieved despite the many obstacles erected by AT&T and other carriers to protect their monopoly. Although the courts ruled in 1956 that consumers have the right to use the telephone network in ways that are privately beneficial without being publicly detrimental, AT&T vigorously resisted this trend for more than a decade, until the FCC confirmed the principle in no uncertain terms in its landmark *Carterfone* ruling. Even today, this resistance continues.

Nonetheless, independent manufacturers have quickly acquired a significant portion of certain discrete markets. They have done so by introducing innovative and high quality equipment that has satisfied needs that remained historically unmet by the telephone industry. The contributions made by the competitive sector were confirmed in the Second Computer Inquiry. There, the Commission concluded that the innovations of the last decade have come disproportionately from AT&T's smaller independent competitors.

Competition in the provision of intercity transmission service is a more recent phenomenon. There is concrete evidence of the positive effect of competition. Indeed, the Commission has found "very little evidence" that competition has caused any adverse impact upon the established carriers and that the established carriers' claims of extensive inroads by competitive carriers are largely "gross exaggerations."

The great benefits that have come from increased competition in these vital markets will continue only so long as any common carrier is precluded from deriving unfair advantages by virtue of its monopoly power in regulated markets. Regrettably, H.R. 6121 will not prevent this from happening.

Competition will continue to grow, however, if deregulation occurs under the watchful eye of the expert agency charged with oversight of the telecommunications industry. Wholesale deregulation cannot be successfully legislated unless proper attention is paid to existing marketplace realities. In the past, the Commission has moved steadily to increase competition and reduce unnecessary regulation. The *Carterfone* decision mentioned above, the *Specialized Common Carrier* decision, the Registration Program for terminal equipment, and a host of other decisions have successfully opened the doors to competition in the provision of transmission service and terminal equipment. More recently, the Commission has moved to deregulate the carrier provision of terminal equipment, and greatly reduced the regulatory burdens imposed on specialized common carriers. It is in the process of considering further ways in which to promote the opportunities for users to share and resell services obtained from monopoly common carriers.

We support granting the Federal Communications Commission the statutory authority to forbear from regulation as a means by which to handle these new technological developments. Likewise, we believe the Commission should be ensured the proper authority to consider the potential for anticompetitive conduct of each individual common carrier in determining the appropriate degree of regulation. This reflects the recommendation of Chairman Charles Ferris of the Federal Communications Commission. We believe this is the prudent and most proper legislative course. This, unfortunately, is not the thrust of H.R. 6121.

GENERAL OVERVIEW OF H.R. 6121

H.R. 6121 constitutes a sweeping revision of the 1934 Communications Act. More importantly, it represents a major contraction in the regulatory jurisdiction of the Commission.

In addition to the specific problems cited hereafter , a fundamental failure of H.R. 6121 rests in the very manner in which regulatory powers are granted to the Commission. Unlike existing law which preserves to the Commission all powers not specifically proscribed, H.R. 6121 is drafted so as to limit the Commission to only those powers explicitly granted. Therefore, unless a specific regulatory authority is provided for by the Act, the Commission will be deemed to be precluded from exercising such authority. This shift in presumption may undermine much of the pre-emptive authority of the Commission to regulate interstate commerce. Furthermore, we have grave concerns that serious jurisdictional questions will arise should the Commission attempt to exercise any of its existing plenary authorities to regulate Title II activities after the enactment of this legislation.

Even those specific reservations of authorities contained within H.R. 6121 may be so seriously flawed as to vitiate their worth. Proponents of this legislation allege that consumers will be the bill's primary beneficiaries. Yet it is highly questionable whether sufficient authority has been granted the Commission even to ensure the proper maintenance of our existing phone system. Section 211 grants the Commission the authority to regulate the provision of basic telecommunications service for the specific purpose to assure that such basic service is provided at reasonable and affordable rates and that carriers do not discriminate with respect to the rates, terms, and conditions for such service. Section 211 does not provide the Commission the definite authority to prescribe quality control standards for the provision of basic telecommunications service. Hence it is unclear whether under the terms of this bill, the Commission may prevent any degradation in the quality of basic telecommunications service or what remedial powers it retains to protect the system. For instance, should degradation occur, can the Commission require that the regulated carrier make improvements as a condition precedent to the expansion of its unregulated activities?

It is this severe restriction on the Commission's power and the over-expansive degree of deregulation which distinguishes H.R. 6121 from other deregulation bills favorably considered by the Congress. It must be emphasized that H.R. 6121 is not a mere price deregulation bill; it constitutes a fundamental emasculation of a federal regulatory agency.

DEREGULATION AND RAMIFICATIONS

H.R. 6121 is premised on a simple dichotomy which divides the telecommunications industry into two categories: "basic" and "non-basic." "Basic" constitutes two-way switched voice telephone. "Non-basic" includes all other telecommunications services, facilities, or products, including those incidental to telecommunication. Encompassed within this latter category are such activities as record carrier transmission services, private line services, resale services, non-basic terminal switching and transmission equipment marketing, terminal equipment and devices, and all informational and data processing services.

Independent of whether this scheme constitutes the proper division, this functional classification system determines the degree to which an activity will be subject to the Commission's regulatory authority. If it is a basic service, the Commission retains permanent jurisdiction. If it is non-basic, the Commission's jurisdiction is dependent upon the nature of the activity involved and whether effective competition exists within the relevant market. Any non-basic telecommunications service, product, or facility is entitled to be offered on a deregulated basis. The presumption created by the legislation favors deregulation and the maximum reliance on competition and the private sector. Furthermore, H.R. 6121 specifically precludes any substantive regulation by the Commission of any terminal equipment or device, in addition to any informational or data processing service. Once deregulation is conferred upon and telecommunication service, facility, or product, all Commission regulatory oversight is proscribed.

It is our conviction that reliance on the deregulated marketplace as the principal safeguard against anticompetitive practices may impose an unconscionable burden on American small businesses and consumers. We must emphasize that deregulation denies the Commission all jurisdiction over the deregulated activity. For instance it is denied the authority to oversee rates, improper tying arrangements, or denials of interconnection. Upon deregulation, virtually all existing common carrier duties cease to attach.

The Committee has been advised by both small businesses and consumers that this excessive degree of deregulation may prove extremely anticompetitive in application. The fear is that if this legislation is enacted, a competitive war will ensue among corporate giants, with small independent businesses crushed in the battle. Furthermore these businesses assert that the new AT&T subsidiary permitted by this legislation will commence operation with several billion dollars in revenues and access to secured financing. This financial strength could then be used to undercut small competitors until they are eliminated from the marketplace.

The proponents' response to this well-founded fear is that the antitrust laws will serve as a sufficient remedy. This reliance on the antitrust laws as the principal safeguard against predation, we believe, is naive. The expense of pursuing this remedy is formidable. Expensive, protracted lawsuits are a luxury that only the corporate giants can afford. Moreover the delays associated with the prosecution of an antitrust action cannot be expected to provide timely relief. *Post hoc* remedies mean little to those driven to bankruptcy by unfair competition. For many consumers, as the indirect purchasers of telecommunications services and goods, they will not even have the antitrust laws for protection.

Given the indubitable likelihood that the sole remedy available to injured competitors and consumers will be the antitrust laws, we offered an amendment to H.R. 6121 to require any subsidiary, established under Section 214, to maintain books and records separate and distinct from those maintained by the dominant carrier. One of the chief purposes for proferring such an amendment was to ensure for future litigants adequate documentation for the prosecution of their civil actions. As reflected by the Committee discussion, we intend that these books and records shall be made available to such litigants pursuant to federal and state discovery laws. The amendment was unanimously adopted.

DEREGULATION PROCESS

H.R. 6121 establishes two distinct means by which deregulation can be achieved. Of particular concern is the 90-day fast track method for non-dominant common carriers.

Under Subsection 215(c)(3), a non-dominant common carrier may deregulate a telecommunications service or facility by petitioning the Commission. The Commission has a 90-day period, with a possible 90-day extension, to deny the petition. Failure by the Commission to meet this 90-day requirement results in immediate deregulation. The Commission has advised the Committee that it estimates that over 600 petitions for fast-track deregulation could be filed. With this potential number, the Commission may be incapable of processing the petitions within the prescribed 90-day limit.

Among those carriers entitled to utilize this fast-track method to achieve deregulation are numerous carriers who provide services for which there are no alternative services available. For example, all international record carriers must interconnect with Western Union for a majority of their domestic record-data transmission services. There is currently no alternative to Western Union. Yet under the terms of H.R. 6121, Western Union is eligible for deregulation under this fast-track method and will thereby escape all common carrier responsibilities, including the offering of the service on a tariff basis and making the service available on a non-discriminatory basis. The absence of regulation entitles these carriers to exploit their monopoly power independent of any public interest considerations.

This absolute proscription on the exercise of any Commission oversight of deregulated common carrier services will not afford sufficient protection against the abuses which may arise from this abrupt transition to absolute deregulation. We cite, for illustrative purposes, the examples set forth in Chairman Ferris' letter to the Hon. Harley Staggers:

—*Satellite transponder shortages.*—Because of transponder shortages on current domestic satellites, many users, including broadcasters and cable operators, are currently vying for existing capacity. Such an imbalance of supply and demand could result in upward pricing pressures and uncertainties in the provision of service.

—*Interconnection problems.*—The Commission continues to have to address interconnection arrangements—carriers to carriers, carriers to private systems, and carriers to private users—particularly at the time when competition is intensifying and disrupting traditional industry relationships.

—*Control of bottleneck facilities.*—The Commission has recently witnessed the entry of independent telephone companies like GT&E and Continental Telephone, with control over bottleneck local exchange facilities, into competitive interexchange markets. Like AT&T, which also participates in competitive interexchange and monopoly local exchange markets, these carriers may have the ability and incentive to subsidize their participation in competitive markets with revenues derived from local monopoly services. Some structural or regulatory safeguards may be required to prevent such conduct.

The aforementioned concerns by no means constitute the entire range of known regulatory problems which will be generated with the enactment of this legislation. They are simply too extensive for inclusion within this dissent. Moreover, given the breadth and magnitude of the market subject to deregulation, we are not even in a position to understand fully the long-term ramifications of H.R. 6121.

A.T. & T. AND THE 1956 CONSENT DECREE

H.R. 6121 is designed, through statutory abrogation of the 1956 Consent Decree entered into by the Department of Justice and AT&T, to deregulate AT&T. Our concern is that the plan endorsed in H.R. 6121 for deregulating AT&T will engender years of litigation and facilitate anticompetitive behavior. This plan reflects the proponents' belief that insignificant disruptions will result from AT&T's entry into new markets and the deregulation of existing business. Indeed the principal concern of these proponents appears to be the dire consequences which will allegedly befall the marketplace should AT&T be constrained from participating.

We disagree. As previously detailed, the information services and data processing industries and the terminal equipment manufacturing business are today flourishing because of the competition of many large and small firms which have actively contributed to new employment and innovation gains in our economy. We fear that there is genuine danger that these innovative competitors will be driven out of the marketplace should an improperly restrained AT&T be permitted to compete. Given the legislation's proposed deregulation plan for AT&T, it is our view that the potential benefits of removing the Consent Decree do not outweigh these risks to competition.

Our concern is founded on both AT&T's unparalleled monopoly power and its record of past predatory practices. Within the telecommunications industry, AT&T wields almost complete monopoly power in various markets of this industry. AT&T controls 80 percent of the nation's local telephone service, 90 percent of the nation's long distance transmission service, 96 percent of the private-line interexchange transmission service, and 82 percent of the nation's terminal equipment. This government-conferred monopoly power ensures AT&T annual revenues in excess of $45 billion.

A related concern stems from the manner in which AT&T is to be released from the Consent Decree restrictions. Normally, where judicial modification of a consent decree is pleaded, the court has before it specific facts upon which the basis for the request for modification is evaluated. A court has the flexibility to tailor its relief to the actual change in facts and retains jurisdiction over the parties to ensure compliance with the ruling. By contrast, the broad approach to deregulation found in H.R. 6121 eliminates the court's role by permitting AT&T to enter into previously prohibited market areas so long as it offers its services through a separate subsidiary. It sanctions AT&T's future behavior for which there is no yardstick other than its history of anticompetitive practices. This shotgun approach not only flaunts judicial precision but also sets a dangerous precedent for Congressional intervention designed to obtain relief for an individual or corporation under the jurisdiction of a court.

We supported an amendment which would have required the Commission to determine prior to AT&T's offering of any unregulated service, that AT&T's entry into the market would not affect or would enhance effective competition. Unfortunately this amendment was rejected by the Committee. Such a regulatory analysis, however, would have lessened the impact of Congress' substitution of this legislation for the 1956 Consent Decree. Absent this amendment, the Commission is left to determine *after the fact* that effective competition does not exist and may reregulate only after finding that regulation is "required to serve the public convenience and necessity." Moreover, the Commission bears the burden of proof with respect to such findings. A more reasonable alternative, especially in light of current market shares, would be to place the burden of proving effective competition upon the entity that seeks deregulation.

A.T. & T'S ANTITRUST PROFILE

The anticompetitive history of this company must not be forgotten. As previously stated, H.R. 6121 proposes to lift the 1956 Consent Decree entered into voluntarily by AT&T. This Consent Decree was intended to prevent AT&T from exploiting its monopoly advantages in areas of unregulated competitive activities. Yet even as a regulated entity, AT&T has been subject to numerous administrative proceedings and antitrust suits for predatory practices. During this past year alone, judgments against AT&T were rendered in the *Northeastern Telephone* case and the *MCI Telecommunications Corporation* case. In addition, AT&T settled during this period four other antitrust suits involving a variety of alleged unlawful acts. To illustrate the pervasiveness of AT&T's unlawful conduct, we cite in detail *Northeastern Telephone.*

Northeastern Telephone Company sued AT&T, Western Electric, SNETCO for a variety of abuses:

(*a*) Pricing products below cost to destroy and discourage competition;

(*b*) Requiring "protective" couplers designed to discourage customers from using non-Bell equipment;

(*c*) Establishing massive advertising campaigns intended to create unreasonable difficulties for prospective competitors attempting to enter the market;

(*d*) Engaging in predatory marketing efforts;

(*e*) Misusing control of monopoly facilities by manipulating price and quality of service furnished to customers of competitors; and

(*f*) Introducing new products solely to maintain market share and impede competition, and premarketing products not yet available to prevent competitors from selling available equipment.

A federal jury found the defendants liable on all counts, with damages awarded in the millions of dollars. In addition, antitrust history was made recently in Chicago with the awarding of $1.8 billion by a Chicago jury to MCI for AT&T's violations of the Sherman Act.

With more than 30 private antitrust lawsuits still pending, coupled with the Department of Justice's litigation, it is essential that adequate structural and other necessary safeguards be prescribed as a prerequisite to the expansion of AT&T's scope of competitive activity. To do otherwise will merely encourage further anticompetitive conduct. H.R. 6121 fails, regrettably, to achieve this goal.

INHERENT FAILURE OF SEPARATE SUBSIDIARY APPROACH

The crippling fundamental flaw in H.R. 6121's proposed deregulation of AT&T is its failure to demand a rigorous scheme of structural separation. Rejecting divestiture as the proper structural approach, H.R. 6121 settles for the establishment of a single affiliated subsidiary as the sole structural safeguard to prevent anticompetitive abuses. It is our firm belief that this subsidiary approach is incapable of curbing predatory practices likely to occur when monopoly and competitive activities are both joined under a single corporate umbrella. This failure taints the heart of the bill and is the principal reason which prevents us from endorsing H.R. 6121.

A clear exposition of the deficiencies inherent in this structural arrangement is found in the Department of Justice's Reply Comments in the Commission's Cellular Inquiry. In this most recent pronouncement of the United States' chief antitrust enforcement office, the Justice Department noted:

> As a mechanism to alleviate these anticompetitive potentials, the Commission has proposed that wireline common

> carriers offer cellular service through separate subsidiaries. (Paragraph 36) It is clear, however, that the separate subsidiaries concept is likely to have a *de minimis* impact on removing incentives to the exercise of market power. The Commission itself has recognized this fact. "In general," the Commission has stated, "if the parent has an incentive to exercise its market power to the disadvantage of consumers and competitors in the absence of a separate subsidiary, it has the same incentive to do so after one is required." Indeed, the Court of Appeals, in *NARUC* v. *FCC*, *supra*, recognized that a separate subsidiary "even perceived most favorably . . . does nothing except *attempt* to make financially impossible with AT&T capital predatory behavior which is already illegal and subject to prosecution under the antitrust laws." 525 F.2d at 637, 638. (Emphasis added, footnote omitted)
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> Moreover, the principle that "separate" entities operating under the same corporate umbrella are unlikely to prevent anticompetitive consequences has long been recognized by antitrust court. See *e.g.*, *United States* v. *Northern Securities Co.*, 193 U.S. 197, 326–327 (1904). For example, in Section 7 merger cases, courts have refused to enter so-called "hold separate" orders—i.e. orders that would permit a challenged merger to take place but require that the acquired company be maintained as a distinct entity until the litigation was resolved. The reason for this is clear: a hold separate order does not significantly alleviate anticompetitive potentials. . . .
>
> In like manner, here, a separate subsidiary with separate officers, personnel and books of account is unlikely to deter anticompetitive potentials. The officers and employees will still be part of the wireline carrier's corporate umbrella and thus subject to suggestions if not directives. Further, even if legions of accountants were used, it would be extremely difficult to determine whether cross-subsidization between wireline and cellular services was actually occurring. Thus, even with the creation of a separate subsidiary, a wireline carrier would still have the incentive and the ability to restrict cellular offerings to services which do not or could not compete with services offered by their local telephone exchange systems.

This refutation of the subsidiary concept as a viable means by which to alleviate anticompetitive abuses mirrors the Department of Justice's previous statements on H.R. 6121.

ACCOUNTING

The absence of full separation between the parent corporation and subsidiary places a greater reliance on the accounting requirements specified by H.R. 6121. This dependency on accounting as a protective tool is, we believe, misplaced. The very nature of an accounting system requires the interjection of subjective values. In implementing the provisions of H.R. 6121, someone within the parent corporation will be required to decide how to allocate costs between regulated and unregulated activities. This person, an employee of the parent and reflecting the perspective of the parent corporation, will, for instance, determine the allocation of costs for shared facilities, top management, and administrative office building to a particular service or group of services. Governed by such subjective computations, this accounting process can provide no significant safeguard against improper cross subsidies.

Furthermore, even though H.R. 6121 directs the Commission to establish an accounting system to segregate such costs, we believe this task, in itself, is inherently incapable of preventing unlawful cross-subsidizations. History substantiates our position. For instance, in Docket 18128 the Commission issued an Order which established specific accounting guidelines and ratemaking principles to be used by the Bell System in formulating its tariffs. This prescription of a costing methodology proved insufficient in itself to prevent cross-subsidization. As the Administrative Law Judge in Docket 20814 concluded:

> The only difficulty with the Docket 18128 Decision is this:. The historical background shows that Bell refuses to abide by those guidelines.

Since the opinion in Docket 18128 was issued, AT&T has been found to have willfully disregarded the Order in numerous proceedings. This experience has been repeated in the DDS rate proceedings, and the present Uniform System of Accounts is woefully inadequate to detect cross-subsidization in existing programs. To rely on accounting to prevent predatory actions in new deregulated markets is, we believe, both naive and more importantly, extremely dangerous to the survival of the existing competition in the telecommunications industry.

SPECIFIC STRUCTURAL FLAWS

In addition to, and independent of the legislation's conceptual flaw, the specific separation scheme contemplated by H.R. 6121 is seriously deficient. Although embellished with the title of "fully separated subsidiary," this subsidiary is required to meet only minimal standards of separation. From its inception the subsidiary could enjoy many anticompetitive advantages. Among the still unanswered questions regarding the formation of the subsidiary are: How will the Commission assess the value of the installed equipment now owned by the operating companies? Will the transfer price fully restore monopoly ratepayers' investment in equipment? Will transfer prices for research reflect any appreciation which may have occurred if the fair market value of transferred research is greater than the cost of having performed it? We firmly believe that the monopoly ratepayer who initially paid for the research should reap the profits from its appreciation.

H.R. 6121 fails to prescribe any standards for the capitalization of the subsidiary. This silence has generated numerous unanswered concerns relating to such capitalization. Can AT&T utilize its bond rating to secure financing for its subsidiary? Can the subsidiary enjoy lower borrowing costs based on its parent's size and monopoly stature?

Will the subsidiary be able to return to the parent for more money if it runs in the red? Will the subsidiary be required to operate at a profit?

These questions are not merely rhetorical. Long-term predatory practices will be subject to greater restraint if the financing of the subsidiary is appropriately handled. Our concern regarding the inadequacy of capitalization control is best understood through illustration. It is our understanding that there is no provision in H.R. 6121 which would prevent AT&T from allocating $10 billion in initial capital to the subsidiary to finance ten different market lines. Such a scenario, possible under the terms of the legislation, would have a drastic stifling effect on competition. It is highly unlikely that other companies, not subsidized by such vast regulated monopoly profit, would dare to go up against such a gigantic subsidiary.

Once established the subsidiary is not required to maintain any significant degree of separation. Coordination of broad corporate policy is ensured by the statutory allowance of one common director between the parent and the subsidiary. Furthermore, the senior officers of the subsidiary are not prohibited from serving on the variety of committees which currently develop policy and coordinate the activities of AT&T and its affiliated organizations. One grave concern is that these task forces evaluate possible modifications to the regulated network. The participation of the subsidiary in these committees will place the subsidiary in a position to receive privileged information relating to the network. In addition, the subsidiary could influence any final decision so as to ensure that any competitive advantage accrues to itself.

Section 219 defines the general framework which governs the relationship between AT&T's regulated and unregulated businesses. As the proposed cornerstone protecting consumers and competitors alike from predatory practices and unlawful cross-subsidies, Section 219 is inherently flawed. It is a cornerstone constructed of "fool's gold." The following deficiencies, although not inclusive, are of particular concern:

(1) The general proscription on the parent granting its subsidiary any preference based on such affiliation only applies to "conduct of business" and not to all AT&T employee behavior. Moreover, this safeguard is subject to two devastating exceptions: an exception allowing AT&T, in its dealings with unaffiliated entities to exercise its "independent customary business discretion," an undefinable standard, and another exception for the directives of "corporate management." Safeguards riddled with exceptions can provide, at best, only phantom protection.

(2) The conduct of business between AT&T and its subsidiary is required to be "fully auditable and compensatory." The term "compensatory" is not defined and product-line accounting is not mandated. Enforcement of this protection may well be impossible. Moreover, the Commission is apparently denied routine access to the records of the subsidiary to determine whether business is being conducted on a compensatory basis.

(3) AT&T is required to file with the Commission any proposed changes in protocols or other technical aspects of its regu-

lated facilities which would require users to modify their interface procedures. This duty only attaches when a final decision has been made. Therefore, AT&T is free to advise its subsidiary of possible modifications, resulting in advance notice and thereby a significant unfair advantage. Furthermore, the transfer of commercially valuable information between AT&T and the subsidiary is prohibited. This proscription, however, does not attach to Western Electric or Bell Labs.

TRANSITION REQUIREMENTS

These problems are exacerbated by the lengthy transition period granted in Section 219 for the formation of AT&T's subsidiary. For example, the bill grants up to eight years for the separation of component offerings, yet the ambiguity surrounding what may be classified as a "component" means that AT&T can delay this transition to its own advantage. During this time, the parent will be able to use its monopoly-funded products to help subsidize the growth of its offspring.

Short of divestiture, full separation, including the consolidation of research and manufacturing within the fully separated subsidiary, is the principal means by which equity of competition can be assured for all parties. Full separation minimizes the potential for improper cross-subsidies. In addition, tying will be curtailed and preferential access to network information will be curbed. For these reasons, the most expeditious implementation of this separation requirement is essential.

At the end of the transition, the bill allows the permanent nonseparation of component and subassembly manufacturing as long as such items are sold to others at the same rates, terms, and conditions as provided to the subsidiary.

This alleged "sell-to-the-world" safegard is, at most, illusory. Since bulk purchase discounts are permitted, the subsidiary could receive preferred and most favorable prices for which no other competitor, due to the lack of size, could qualify. Secondly, the components and subassemblies may be of such a unique character that they will be useful only to the subsidiary.

Moreover, the exception for components and subassemblies ensures the permanent integration of the unseparated elements of Western Electric and the competitive equipment marketing activities of the subsidiary. This link guarantees the continuous potential for improper cross-subsidies and preferred access to privileged information.

H.R. 6121's lengthy transition and consolidation period ignores the speed with which technological advances are made in this field. Realizing that the state-of-the-art may be completely revolutionized within far less time, an amendment was offered to permit the Commission to modify these transition time periods as necessary to achieve consolidation as expeditiously as possible. Furthermore, the amendment permitted the acquisition of components and subassemblies after such transition period only upon a showing of good cause. Although the Committee refused to adopt this amendment, we believe the amendment was essential to minimize predatory practices and to guarantee fair competition.

PRESERVATION OF COMMISSION AUTHORITY

We are especially opposed to the inclusion in H.R. 6121 of subsection (h) in Section 219. This subsection totally eliminates the Commission's authority to revise or amend any of the structural changes contained in H.R. 6121. We do not believe that such a severe handcuffing of the Commission is wise or is called for. As the expert agency charged with the oversight of the telecommunications industry, the Commission should have the flexibility to deal with changing circumstances and changing technology. Without this flexibility, the Commission would be required to return to Congress each time the structural scheme set forth in H.R. 6121 needed adjustment. In the face of strong anticompetitive problems, a legislative resolution, with its accompanying uncertainties and delays, could prove disastrous.

The Department of Commerce has raised similar concerns about Section 219(h) as currently drafted: "Telecommunications is a dynamic field, and requirements set down today may prove inadequate in the future." Thus, the Department believes that the Commission "should retain the flexibility to take further actions or to modify specific requirements on the basis of experience or changed circumstances." Likewise, last year's National Telecommunications and Information Administration Primer—the basis for much of H.R. 6121—unequivocally recognized the importance of retaining the Commission's authority to require more than one subsidiary and to impose additional safeguards.

In providing safeguards to ensure competition, we need not make any judgment about AT&T's past activities. Rather the mere existence of AT&T's vast reservoir of unchecked market power alone may substantially lessen competition by inhibiting entry or aggressive competition from others. This is certainly not the intent of the Committee, but by retaining (h) as now written we make it clear that we want the Commission's hands tied for all time. We believe that some of the bill's provisions are worthwhile and necessary, but in many areas, we are sailing in uncharted waters. We do not know if the structural proposal before us will be adequate. Even if it works in the short run, the changes we mandate may be inadequate as the network and industry grow. No one on the Committee—at least those of whom we are aware—has a crystal ball to see the future. It makes no sense, therefore, to impose this regulatory straitjacket on the Commission. We are legislators, not repairmen. We should leave the fine tuning and adjustments to the experts on this issue—the Federal Communications Commission.

ANTITRUST IMPLICATIONS OF H.R. 6121

In addition to opposing the limitations being placed on the Commission's authority, we believe the thrust of subsection (h) must be reversed in order not to jeopardize—either directly or indirectly—the Justice Department's antitrust case against AT&T. Certainly, after the recent MCI decision, we cannot believe that the Justice Department suit is insignificant. We fear Congress will be sending a false signal to Judge Green that it wants AT&T left alone. Can we doubt even for a minute that subsection (h) and all of H.R. 6121 won't play a principal role in AT&T's defense?

Judiciary Committee Chairman Peter Rodino has already expressed his concern that the structural modifications proposed in the bill will encourage parties to the Justice Department suit to argue that further structural relief is limited or precluded. The entire text of Chairman Rodino's letter to Subcommittee Chairman Van Deerlin follows:

> I appreciate very much the willingness expressed in your July 3 letter to continue the dialogue concerning the antitrust issues underlying H.R. 6121, the Telecommunications Act of 1980.
>
> In offering you additional views on this important legislation, I wish to stress my deepest respect for the expertise on the telecommunications industry demonstrated by your Subcommittee. It is my hope that the Judiciary Committee may contribute to that expertise by sharing our perspective on antitrust enforcement and policy as it applies to this vital industry.
>
> I welcome the commitment expressed throughout H.R. 6121 to make certain that advanced telecommunication services be provided to all Americans in the most advantageous competitive framework. Consistent with this commitment, the central antitrust concern should be to establish and maintain an overall structure of the industry in which competition will thrive. That objective is entirely consistent with the antitrust suit brought by the Department of Justice in 1974 and now pending in the United States District Court for the District of Columbia (*United States* v. *AT&T*, Civ. Action No. 74–1698 (D.D.C.)).
>
> In the complaint, the Government seeks broad and fundamental structural relief with respect to AT&T, including divestiture of certain of the company's key assets and other relief directly related to the structural provisions of H.R. 6121. If any relief is granted, the court could effectively set aside significant portions of the 1956 consent degree, which settled an earlier antitrust-proceeding between the Government and AT&T. The consent decree deals with the extent to which AT&T may engage in related telecommunications activities, one of the issues now directly addressed by H.R. 6121.
>
> The AT&T case was reassigned to Judge Harold Greene in May 1978 after the death of Judge Waddy. Since that time, it has moved ahead expeditiously. The parties have now completed expansive discovery and have filed with the court detailed statements of contentions. These statements have provided the court and the parties with a basis for limiting substantially the areas of dispute. Thus, before trial begins in October of this year, the parties hope to stipulate agreement on 80 to 85 percent of the relevant issues and facts. With this substantial agreement process completed and a strong judge in control, some experts believe that the trial phase could be completed as early as spring of next year.

In resolving the issues in the complaint, the district court will apply the principles of antitrust law adopted by the Congress. For generations of Americans, these principles have provided a framework for preserving the advantages of a free and competitive economic system. There is no basis at this point for suggesting that these principles will not work for the telecommunications industry or that the court will apply them in any manner inconsistent with the objectives of this proposed legislation. The court will have before it an exhaustive and to a large degree stipulated factual record which will provide an ample basis for deciding the complex antitrust issues and, in the event the violations are found, determining the appropriate structural relief or other remedies.

The commitment to judicial resolution of any structural deficiencies in the telecommunications industry is a substantial one that should not be lightly disregarded. The *AT&T* case is one of the most important antitrust proceedings brought in the last 50 years. Litigation costs for the Department of Justice alone have now reached $8 million. Unlike the IBM case, the *AT&T* litigation has progressed expeditiously with hope of a judicial decision in the immediately foreseeable future. The chances of a consent settlement of the case (as occurred in the major 1956 litigation) are significant, particularly if the possibility of intervening legislation does not deter the parties from entering into serious consent negotiations.

There is of course no question of Congress' authority to enact legislation altering the structure of the telecommunications industry. The issue here is the timing of a partial intervention by the Congress which would significantly alter the structure of the industry while at the same time purporting to leave intact the court's authority to grant other structural relief.

I understand that it was not the intention of your Subcommittee in any way to affect the outcome of the ongoing litigation. The Department of Justice, too, has indicated its belief that no effect on the litigation would ensue, given the language of the saving clause adopted by the Subcommittee. But both the complaint and the prayer for relief are grounded upon the existing structure of the industry. Other parties to the AT&T action will assuredly argue that further structural relief is limited or precluded, citing the Congressional decision to change the structure of the industry in some areas and not in others. And the bargaining position of the parties will undisputedly be altered to the extent that AT&T is permitted to engage in activities subsequent to enactment of the legislation that were previously forbidden. While I share your hope that the courts would exercise their full authority in granting relief regardless of the content of a legislative intervention, I do not believe the Congress can close its eyes to these realities.

These concerns lead me to oppose inclusion of provisions in H.R. 6121 that would alter the structure of the industry prior to final resolution of the pending litigation. As I have indicated, by firmly rejecting premature legislative intervention, Congress can actually encourage the parties to work towards a prompt consent settlement. The Congress would of course be free to send a message to the parties that an expeditious, and if possible consensual, resolution of the litigation is in the public interest.

At a minimum, this approach will require deletion of Sections 214(a), 214(c), 218, and 219. I would also recommend that Section 7 of the bill be amended to incorporate language reaffirming the courts' authority to provide full structural relief in pending litigation (see attached).

I understand that my recommendation would require significant changes in a piece of legislation that has been under consideration for many months before your Subcommittee. Our concern with the interplay between the legislation and the ongoing litigation, initially expressed to you in my communications with your Subcommittee in February of this year, has necessarily crystallized only as the bill itself has evolved into the form reported by your Subcommittee on June 18.

Even with the changes I have recommended, the bill would still achieve major objectives, including providing for deregulation of many telecommunication services. These aspects of the bill are consistent with the laudatory deregulation principles which this Congress has already acted upon in the trucking and railroad industries. They should not negatively impact upon the pending litigation.

Unquestionably, many of the principles for restructuring the industry set forth in H.R. 6121 have a great deal of merit. They deserve careful consideration by the enforcement and regulatory agencies and, if necessary and at an appropriate time, by the Congress. It is my conviction, however, that the judicial enforcement mechanism for one of the most important antitrust cases of our time, now gathering momentum over the last six years, should be left undisturbed to complete its task of examining the basic structural issues involving the carrier controlling 95% of the telephone industry. Legislative intervention according structural changes to a party to that litigation is, at best, highly unusual. I believe that such Congressional actions should be taken only when the strongest public need for interim action has been demonstrated, and only to the minimum extent required to respond to that need.

I hope that my expression of these concerns will assist you and the Members of the full Committee in understanding the concerns of many Members of the Judiciary Committee. If the full Committee is in a position to accommodate these concerns, I do not believe that further action by the Committee on the Judiciary would be required.

> I will continue to make the resources of our Committee available to you and the full Committee in dealing with these issues. I hope that further discussion will enable us to arrive at a solution satisfactory to both Committees.

Unfortunately, the Committee did not heed the guidance of Chairman Rodino, and the necessary curative amendments were not adopted.

ACCESS CHARGE AND THE RIGHT OF INTERCONNECTION

Additional concerns with the legislative scheme of H.R. 6121 are based upon the provisions for access fees and interconnection found in Sections 231 and 233. These sections are designed to ensure that all interexchange carriers, including MCI, Southern Pacific, and AT&T's own Long Lines, are granted functionally equivalent interconnection to facilities and services. The nondiscriminatory protections are essential to the capability of interexchange carriers to compete in the market.

It is interesting to note that years ago, MCI was presumably awarded the right to:

> interconnection facilities similar to those presently provided to Bell's Long Lines Department on a non-discriminatory basis

pursuant to an FCC Order in Docket No. 19896, and reaffirmed by the United States Court of Appeals for the Third Circuit. Notwithstanding that directive, the need for this crucial interconnection feature has to be addressed in legislation because AT&T has failed to comply with the above ruling and because all carriers need the assurance of equivalent access to local lines before the implementation of a new system of access fees based upon the use of intraexchange facilities.

It is our understanding that the Committee intended that the issue of equivalent and nondiscriminatory access to any dominant carrier, other regulated carrier, or an intraexchange carrier be settled expeditiously. Intraexchange and other carriers are expected to be in compliance with the requirements of the bill at the time the schedule of fees referred to in Section 233 takes effect. Absent such compliance, an interim schedule of fees may be ordered by the Commission. We join the Committee on this point.

Furthermore, we concur with the Committee's intent that the interim schedule of fees promulgated by the Commission, should it fail to certify that the schedule of access fees submitted by the intraexchange carrier is in compliance with the requirements of Section 216(b)(3) and this section, is to be set at a level which:

(1) provides the strongest possible incentive and encouragement to the intraexchange carrier to provide fully nondiscriminatory interconnection as expeditiously as practicable, and

(2) ensures that the interexchange carrier pays an access fee that is no greater than the amount which accurately reflects the service it is receiving.

The nondiscriminatory protections in Section 216(b)(3) and this section are crucial to the ability of interexchange carriers to compete in the market, and that affected carriers have an obligation to provide fully equivalent interconnection, commensurate with that enjoyed by any dominant carrier's interexchange services, to all other interexchange carriers. We agree.

In addition, we believe that it is imperative to reaffirm the Committee's intent that any interexchange carrier shall pay intraexchange access fees based only upon actual use of the intraexchange facilities. As set forth in Section 231(d)(3) and 233(e), the contribution to the National Telecommunication Pool is based exclusively upon the amount of such intraexchange access fees paid. Therefore an intraexchange access fee or contribution to the NTP cannot be imposed upon an interexchange carrier for services which do not utilize local intraexchange facilities. Innovations in telecommunications will occur more rapidly if progressive communication systems are not unduly hampered by inappropriate fee or contribution obligations. This will be to the long-term benefit of the American people.

We are, however, very troubled by the bill's imposition of surcharges on all long distance telephone calls interconnecting with local facilities to subsidize local service and rural local and toll rates. This subsidy is claimed by AT&T and others to be present in its MTS rates, imposed through the jurisdictional separations process. The problem is that such a subsidy's very existence has been questioned, and we are aware that AT&T has made this claim twice before. Facing competition in private line services and in terminal equipment, AT&T attempted to convince the Commission that its rates in these areas contained a "contribution element" to keep local rates low. In Docket 20003, the Commission found that it was probable that the very opposite was true—that local rates were subsidizing terminal equipment, and that AT&T's unjustified private line rates were not subsidizing anything. Given the history of this claim, we cannot see the wisdom of writing this alleged, undemonstrated subsidy into statutory law. Since the cost justification and support for AT&T's MTS rates is largely unexamined, it is not known whether AT&T is in fact subsidizing its local rates through the separations process, or underpricing the vast range of facilities and services provided to its long distance operations by its local exchange companies. At best, the size, direction, or existence of a subsidy is a matter of dispute among experts in the federal and state regulatory community.

There are two areas of concern that are not reflected in the bill. In the first place, residential consumers will be paying the bulk of the statutory subsidy, since they, and not business customers, make the majority of long distance calls, pay the greatest share of long distance revenues, and account for the overwhelming preponderence of minutes of use of the long distance system. Thus, the residential consumer will pay more in subsidy, whether it is imposed per call, per minute of use, or as a percentage of revenues. This will have the bizarre result that the residential caller will be paying a subsidy each time a long distance call is made, in order to hold down the rates for local calls.

The second danger in this odd system is its clear impact on AT&T's competitors in the long distance market, who are now making their services available to the general public. These competitors do not own local telephone monopolies; AT&T does. In fact, it provides local service to 80 percent of the telephone subscribers in the country. Holding the lion's share of local service, it will inevitably receive the lion's share of the local rate subsidy paid by the users of long distance. In other words, the proceeds of the subsidy will be paid by AT&T and its competitors principally to AT&T itself. Most of what AT&T "pays" in subsidy it will simply collect back through its local operations, with little impact on its bottom line. The competitors, by contrast, will never see the money again. It will come directly out of their potential profits, and will be used to subsidize the local prices charged by their principal competitor. We believe that the Committee was not cognizant of this fundamental point.

ABSENCE OF HEARINGS

Many of the opponents of H.R. 6121 and members of the Committee have justly noted the absence of hearings on this important legislation. Although the supporters of this legislation often cite the lengthy hearings that have occurred in past years, the real situation is that these hearings were held on omnibus communications bills (H.R. 13015 and H.R. 3333) which included comprehensive provisions on broadcasting, cable television, and international communications. The hearings held on the common carrier portion of thes bills were actually quite brief (only 8 days during 1978), and the provisions in the rewrite bills were very different from those contained in H.R. 6121. Therefore, it is very misleading to claim that hearings were held on this particular bill and that the public was afforded adequate time to comment fully on its provisions.

This absence of any public hearings on H.R. 6121, and the provisions contained therein, is, to a significant degree, the principal blame for the numerous deficiencies of the legislation. Neither proponents nor opponents were afforded the opportunity to comment publicly on the provisions of the bill, and the Members of Congress were denied the opportunity to challenge their perspective in a public forum. As a result, H.R. 6121 represents in the main an amalgamation of late night compromises and last minute deals. One of the historic virtues of our legislative process has been its dependency on reasoned discussion and examination. H.R. 6121 would have benefitted from such a legislative experience.

CONCLUSION

In conclusion, we voted against H.R. 6121 because we remain unconvinced that the separations required by the bill are sufficient to protect the consumer or encourage truly fair and full competition. We are not convinced that it is sound public policy to deny the Federal Communications Commission the regulatory flexibility it needs to ensure that the structural changes made in the bill really work. And we still believe that the spirit of this legislation may have an unintended chilling effect on pending antitrust cases filed against AT&T. This legislation will establish a clone of the world's largest corporation, with a substantially similar productive capacity. The temptation will be overwhelming for AT&T to transfer information, services, assets, and personnel between parent and subsidiary. We doubt that the accounting system alone will be able to monitor these transactions.

H.R. 6121 is one of the most important pieces of legislation to be considered by the Congress this decade. With financial stakes of up to $300 billion a year at risk, we believe that the former Chairman of AT&T may have stated it best when he noted that the legislation that eventually becomes the law of the land will determine for better or worse the basic character of the telecommunications industry for generations to come. Despite the good intentions of its sponsors, H.R. 6121, we have concluded, will condemn the telecommunications industry to a future of ceaseless litigation and competitive uncertainty. We cannot endorse such a legacy.

EDWARD J. MARKEY.
ROBERT T. MATSUI.
JAMES H. SCHEUER.
BOB ECKHARDT.
RONALD M. MOTTL.
ANDREW MAGUIRE.

DISSENTING VIEWS OF REPRESENTATIVE ECKHARDT

The stated purpose of this bill, contained in Section 201, is to assure that the American people will have reliable, efficient and diverse telecommunications services, facilities and products at reasonable rates. In order to achieve this worthy goal, the bill relies upon competition in the private sector and clearly states that the FCC should regulate only to the extent necessary to foster a competitive environment. Competition may indeed be the best regulator—*if* competition exists. But deregulation *without* competition is economic tyranny.

The waiver of the 1956 Consent Decree prohibiting AT&T's entry into unregulated markets is an enormous step which will have a profound and potentially disruptive impact on the data processing, information transfer, and communication markets, among the most productive and fastest growing industries in our country. Obviously AT&T has enormous market power—it is the world's largest corporation with 1979 profits of nearly $5.7 billion and a gross plant worth an estimated $113.5 billion compared to a gross plant of $32.6 billion for all of its competitors combined. Rather than take a step of such historically significant proportions in a precipitous fashion, I believe that it is necessary for the FCC first to determine whether deregulation will enhance or deter competition in the various markets and submarkets that make up this highly complex industry.

During committee consideration of the bill I offered what could be simply termed a "look before you leap" amendment to Section 218 (a)(1), the section deregulating the dominant carrier (A. T. & T.) and waiving the prohibitions of the 1956 Consent Decree. The FCC could authorize by rule the waiver of the consent decree if it first determined that the benefits to the public outweigh the potential adverse effects. In making its determination the Commission would have to conduct a regulatory analysis of the economic impact upon relevant markets and submarkets and find that effective competition in all relevant markets and submarkets would be unaffected or enhanced by the authorization.

One criticism, whether justified or not, which has consistently been raised about this legislation is that insufficient hearings have been conducted to determine just what impact permitting the world's largest corporation to enter a relatively new and competitive market will have. The process that I proposed would answer the questions raised in a regular and orderly manner, true to the stated purpose of this bill. Yet the committee chose to reject this necessary safeguard.

Without this initial safeguard for competition, I believe that the "re-regulation" standards in Section 214 are virtually meaningless. Moreover, the FCC is given totally inadequate powers to oversee the transition of a separate A. T. & T. subsidiary into the deregulated market. The inability of the Commission to modify the transition periods is a large enough problem, but the express exclusion of FCC authority in Section 219(h) to review and adjust the far reaching structural changes involved is completely irresponsible. The failure of the committee to correct such salient deficiencies required that I oppose the entire bill.

In summary, whatever structural solution is ultimately found for A. T. & T. in order for it to enter unregulated markets, the FCC should retain sufficient authority to review the effect of that entry on competition before that fundamental change occurs.

The present provisions in H.R. 6121 for oversight review by the FCC of deregulation and waiver of the 1956 Consent Decree can be utilized only after any resulting evils have occurred. Then it will be too late effectively to remedy the damage to a growing and vital competitive market. Under Section 214 of the bill as it now stands, once deregulation occurs and competitive abuses do arise, before the FCC can apply an appropriate remedy it must make the finding that effective competition does not exist; it then also has the burden of proving that resumption of regulation is required to serve the public convenience and necessity.

Such severely circumscribed authority is like permitting the doctor to consider a blood transfusion after severe anemia is manifesting morbid symptoms, then requiring lengthy lab tests before the life-saving relief can be administered.

Bob Eckhardt.

○

96TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPT. 96–1252 Part 2

TELECOMMUNICATIONS ACT OF 1980

OCTOBER 8, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. RODINO, from the Committee on the Judiciary, submitted the following

ADVERSE REPORT

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany H.R. 6121]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6121) to amend the Communications Act of 1934 to make certain revisions in the provisions of such act relating to the regulation of telecommunications activities, having considered the same, report adversely thereon, and recommend that the bill do not pass as referred to the Committee.

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JOEL GINSBURG, *Counsel*
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I. INTRODUCTION

H.R. 6121, the Telecommunications Act of 1980, was reported favorably by the Committee on Interstate and Foreign Commerce on August 25, 1980. The Speaker ordered the bill sequentially referred to the Committee on the Judiciary until October 1 to permit consideration of important antitrust issues addressed by the bill. The referral date was subsequently extended until October 8, 1980.

The Subcommittee on Monopolies and Commercial Law held hearings on the antitrust aspects of the bill on September 9 and September 16. On September 25, by unanimous voice vote of the members present, the Subcommittee voted to report the bill adversely to the full Committee, but with a recommendation that its action be without prejudice to consideration of such legislation during the next session of Congress.

The Subcommittee's action was taken after it became clear that H.R. 6121 would have to be substantially redrafted to overcome its perceived defects. Amendments that would have increased the authority of the FCC to regulate the dominant carrier, amendments that would have truly separated the dominant carrier from its subsidiary as a safeguard against cross-subsidization, and amendments to preserve the 1956 consent degree all enjoyed broad support in the Subcommittee. But because the adoption of such amendments would have presented essentially a new bill and the time limitations of the sequential referral would have deprived interested parties of an adequate opportunity to comment before full Committee action had to be taken, and because it seemed unlikely that similar legislation would be acted upon in the Senate, the Subcommittee concluded it was unnecessary to put the full Committee and the House through a very complex and possibly academic exercise. This conclusion was buttressed by the recognition that the testimony offered by the two Administration witnesses was sharply conflicting and that the Justice Department and the dominant carrier might try to negotiate their differences.

The Subcommittee concluded that the bill had to be reported "adversely" because, in its present form, H.R. 6121 is substantially flawed.

However, the Subcommittee did not conclude that no legislation should be enacted. Thus the Subcommittee also recommended that the Committee Report make clear that its action was "without prejudice" to the consideration of legislation in the next Congress. The additional time may allow the Administration to formulate a single policy and AT&T to seek modification of the 1956 consent decree in the courts if it, in fact, desires modification.

On September 30, the Committee on the Judiciary, by voice vote, adopted the recommendation of the Subcommittee, ordering the bill reported adversely, but without prejudice to consideration of telecommunications legislation during the next session of Congress.

II. HISTORY AND RELEVANT PROVISIONS OF H.R. 6121

H.R. 6121 would amend the Communications Act of 1934. A major purpose of the bill is to carry through deregulation and procompetition policies, many of which find their roots in policies implemented by the Federal Communications Commission. The bill, however, goes beyond the deregulation envisioned by the FCC in a number of critical respects, in the process cutting back on the existing regulatory authority of the Commission. As a part of the deregulation scheme, the bill restructures the operations of one of the largest (and until now regulated) companies in the world. This restructuring raises substantial questions about the viability of competition in a deregulated environment. Serious questions have also been raised concerning the bill's potential negative impact on the major Government antitrust litigation now pending against AT&T, and its lifting of critical portions of a 1956 judicial consent decree settling previous antitrust litigation brought by the United States against AT&T.

Legislative proposals for deregulation and a signifiant restructuring of the telecommunications industry date back at least four years when the Communications Subcommittee of the Commerce Committee began holding hearings on this subject. For the most part, these efforts postdate the filing of the complaint in *United States* v. *AT&T* in 1974, a pending suit that involves an attempt by the Department of Justice to obtain a fundamental restructuring of the Bell System.

A major impetus in the drive toward this legislation has been the active support of AT&T, the nation's dominant telecommunications carrier. Although AT&T has urged a number of grounds in support of new legislation, including the generally acknowledged need for deregulation, a common and recurrent theme in AT&T's statements has been the argument that Congress, not the courts, ought to decide questions involving the restructuring of AT&T. The Bell System has urged that Congress take action that will directly or indirectly pre-empt the jurisdiction of the courts to grant the structural relief sought by the Department of Justice.

In 1978 testimony on an earlier House bill, William M. Ellinghaus, Vice Chairman of AT&T, told the Communications Subcommittee that Congress "is a more appropriate forum for a resolution of this fundamental issue of industry structure than are the courts." AT&T Chairman of the Board, Charles Brown, urged in April 1980 that H.R. 6121 is inconsistent with the Department of Justice suit:

> It seems to me that the suit is obsolete * * *. Anyway, if the administration is in favor of it (the House bill), I don't

understand what the Justice Antitrust Division is doing off on some other tack. (Washington Post, April 17, 1980.)

During this session of Congress, a number of telecommunications bills have been introduced in both the House and the Senate. The original and far simpler version of H.R. 6121 was introduced in December 1979 by a number of members of the Commerce Committee. Although the Subcommittee on Communications held eight days of hearings in 1979 on related provisions in earlier proposed omnibus communications legislation, the Subcommittee has held no hearings on the provisions of H.R. 6121, many of which differ substantially from those in earlier proposed legislation.

The Subcommittee on Communications moved to report the bill in January 1980. Thereafter, disagreements concerning the nature of the separate subsidiary to be established by AT&T delayed consideration of the bill until late June, when it was reported in amended form by the Subcommittee.

On July 1, 1980, Chairman Rodino wrote to the Chairman of the Commerce Committee, Honorable Harley O. Staggers, expressing concerns about the antitrust impact of the bill as reported by the Subcommittee. On July 21, 1980, Chairman Rodino wrote a second letter to the Chairman of the Communications Subcommittee, Honorable Lionel Van Deerlin, detailing the substantial antitrust concerns and suggesting changes that would lessen any negative impact. On August 25, the full Commerce Committee reported the bill favorably. Except for one minor amendment to the Savings Clause (section 9), the full Committee failed to accept any amendments addressed to Chairman Rodino's concerns. The Speaker then directed sequential referral to the Committee on the Judiciary.

H.R. 6121 amends major portions of the Communications Act of 1934. It provides for deregulation of many telecommunications common carrier services; unlike other proposals in the House and Senate, it does not address issues concerning deregulation of the broadcast industry. While the bill is lengthy, dealing with a substantial number of telecommunications issues, the Committee on the Judiciary focused its attention on a limited group of provisions with a direct and substantial bearing on antitrust law and policy.

The bill places largely outside the FCC's regulatory jurisdiction all enhanced or non-basic communication services and requires AT&T to form a separate subsidiary for all such services. The term "basic telecommunications service" is defined in Section 202(1) as the "basic two-way switched voice telecommunications service * * * provided on a universal basis to the general public." Among the activities that fall outside the basic service category (and would therefore be deregulated) are record carrier transmission services, private line services, resale services, non-basic terminal switching and transmission equipment marketing, terminal equipment and devices (including the standard dial or push button telephone), and all informational and data processing services.

The terms for operation of the separate subsidiary directed by H.R. 6121 are set forth in Section 214(c) and 219. These sections require inter alia that separate accounting systems be established for the parent and subsidiary, that the two corporate entities have separate manufacturing, marketing, and maintenance operations, and that they have no more than one common member of their respective boards of directors. However, the subsidiary may be fully owned by the parent. The bill also permits the parent and the subsidiary to continue sharing common basic research facilities (that is, Bell Telephone Laboratories), to file consolidated tax returns, to share institutional advertising, to rotate management employees, to share property or enter into joint ventures, and to operate common pension or stock option plans tied to the stock of the parent corporation.

Section 218 would permit AT&T to engage in unregulated telecommunications activities regardless of any terms or conditions of the 1956 consent decree settling previous antitrust litigation brought by the Government against AT&T. Although this provision contains a few limits on the type of business which AT&T may enter, it effectively eliminates the restraints of the 1956 consent decree.

Section 9 of the bill provides that nothing in the Act shall be construed to create any antitrust immunity or to express any intention of the Congress on the questions of liability or relief, including structural relief, in any pending or future antitrust litigation. This language was added by the Communications Subcommittee after input from the Department of Justice, provided at Chairman Rodino's request, concerning an appropriate "savings clause" to reduce the risk of negative impact on the pending antitrust litigation.

III. A HISTORICAL REVIEW OF THE DOMESTIC COMMUNICATIONS INDUSTRY

A. DEVELOPMENT OF THE DOMESTIC TELECOMMUNICATIONS INDUSTRY

Most other nations in the world have charged a single governmental body with providing all communications services, including both telecommunications and postal services. In contrast, the common carrier communications industry in the United States is privately owned, governmentally regulated, and limited to telecommunications. Traditionally, the industry has been divided into two essentially monopolistic sectors—voice (telephone) and record (telegram)—which have been provided primarily by two principal carriers—the Bell System and Western Union. The division of these services between the two companies grew out of an 1879 agreement by which each agreed to stay out of the other company's business.

After the initial Bell System patents expired in 1893, telephone service expanded rapidly with the creation of new, and sometimes competing, independent telephone companies. The Bell System itself grew dramatically in the face of this competition, expanding from 266,431 telephones in 1893 to 3,132,063 telephones in 1907. Bell already controlled phone service in many of the large cities as well as the long distance circuits interconnecting those cities. Since Bell refused to interconnect with independents, communities served by such independents were generally isolated from outside service.

According to an FCC document, Bell also sought to maintain its dominant position by refusing to sell Western Electric equipment to non-Bell companies, by refusing to purchase non-Western Electric equipment, and by filing numerous suits to protect its patents.[1] Beginning in 1903, Bell sought to acquire two of the three largest telephone equipment manufacturers, but these acquisitions were defeated when a private party and the Attorney General of the State of New York brought antitrust actions.

Although the Bell System also endeavored to control technological developments during these early years, much of the advancement came from independent sources. When Bell was unsuccessful in obtaining the patents for the dial telephone, it declined to incorporate the invention into its equipment for a number of years. Another major technological development that occurred outside the Bell System was the first mechanical switching system (a substitute for the manual connection of calls by a switchboard operator).

These conditions spawned a number of further regulatory actions at the state and federal levels. Between 1904 and 1919, 34 states passed laws which required interconnection of telephone companies. Many states also formed regulatory bodies to oversee state and local telephone company activities. In 1910, Congress granted the ICC authority over interstate wire and radio common carrier communications, authority that was transferred to the newly created Federal Communications Commission in 1934. AT&T supported the move toward government regulation, apparently motivated in part by a concern that proposals for Government ownership of the telephone system might otherwise prevail.

Beginning in 1907, AT&T began a program to acquire competing telephone companies. The opening of sales of Western Electric equipment to independents made integration of such companies into the Bell System easier. In 1909, AT&T also purchased a controlling interest in the nation's largest telegraph company, Western Union. These and other acquisitions led the surviving companies in the telephone and telegraph industries to petition the Justice Department for relief. Involvement of the Department ultimately led to the "Kingsbury Commitment" in 1913. Pursuant to that commtiment, Bell agreed to divest its holdings in Western Union, not to acquire control over any competing companies, and to interconnect its system with independents for toll service purposes.

The Kingsbury Commitment marked the end of significant head-to-head competition between Bell and independent operating companies. Agreements were reached leaving either Bell or an independent in control of each community. This solidified Bell's control over most of the profitable service areas, but assured independents of survival in many smaller communities or rural areas.

AT&T was relieved of its commitment not to purchase competing phone companies by the Willis Graham Act of 1921, but an aggressive consolidation policy led to further opposition by the remaining independents. In 1922, the Bell System entered into an agreement with the United States Independent Telephone Association to limit its acquisitions of operating telephone companies, an agreement which ensured the survival of the independents through the present day. Today, approximately 1,500 independents continue as local monopolists, interconnecting with AT&T long lines and the Bell operating companies.

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[1] Facts concerning AT&T and the telephone industry, unless otherwise indicated, are taken from the Report of the Committee on Interstate and Foreign Commerce on H.R. 6121 (with dissenting views) (August 25, 1980); Plaintiff's Third Statement of Contentions and Proof in *United States* v. *AT&T* (D.D.C., filed Jan. 10, 1980); and an FCC submission to the Communications Subcommittee entitled "An Overview of the Domestic Telecommunications Industry and the Commission's Policies Concerning Terminal Equipment and Private Line Services" (September 27, 1976).

B. DEVELOPMENTS SINCE 1960

Until the 1960's, the basic, switched telephone network was used almost exclusively for voice communications between individual subscribers. The only terminal used to any significant extent was the black, dial telephone. Under these conditions, there was little reason for the FCC to allow additional entrants into this homogeneous market.

The only service in which Western Union and the Bell System directly competed for business was private line service where both companies offered competing interstate lines for high volume communications users. Private line services are, pursuant to AT&T and Western Union tariffs, point-to-point dedicated communications lines reserved for specific customers on a 24-hour-a-day, 7-day-a-week basis.

The private line market consisted of our basic submarkets:

(1) telegraph grade private lines (used by the newspaper wire services);

(2) telephone grade private lines (used by large businesses);

(3) audio/radio private lines (used by broadcasters); and

(4) audio and video private lines (used by the television networks).

This stable and well-segmented market structure has not been disrupted by technological developments that have radically expanded the possible applications of the telephone network. More than anything else, the emergence of the modern digital computer has vastly expanded the horizons of the telecommunications industry.

First generation computers required an operator physically to come to the site of the machine and await a free block of time to utilize the computer. The present generation of computers eliminates both of these limitations. With the aid of telecommunications lines and an input/output terminal at the user's location, the operator can now make use of a centralized computer thousands of miles away. Any time sharing mechanisms (as for example are utilized on air line reservation computers) allow the machine to perform more than one task simultaneously so that the user may have instant interaction with the computer.

With these changes have come demands for new and dramatically different terminal equipment (going well beyond the basic black dial telephone). Today, "terminal equipment" may in itself be a mini-computer or data processing machine. With the use of increasingly sophisticated computers and terminals, the standard private line service provided by AT&T and Western Union also has become inadequate. For example, the traditional voice telephone network can transfer a communication in only one direction at a time, whereas many sophisticated computer systems work more efficiently with simultaneous transmission of data in both directions. Moreover, the traditional switching service of the telephone network, that may require 10 or 15 seconds to connect a caller, may be unacceptable when linked to an expensive computer that requires only a fraction of a second to complete entire computer operations.

The stable telecommunications market of the 1960's has now been replaced by a diverse and innovative market for new and more advanced terminal equipment devices and transmission lines. With the changing market conditions, the FCC has moved to allow additional entrants in the markets for terminal equipment and transmission services.

The merging of the telecommunications and computer industries has also created a definitional problem for the FCC: drawing a line between traditional common carrier telecommunications (long subject to FCC regulation) and computer services (not subject to FCC regulation). This problem was addressed most recently by the FCC in its Second Computer Inquiry (decision released in May 1980, now awaiting reconsideration).

IV. Structure of the Telecommunications Industry

A. TELEPHONE COMPANIES

1. AT&T (The Bell System)

Through ownership of the original telephone patents, AT&T became the largest company in providing telephone service almost from the outset of such service in the late 19th century. While there remain some 1,500 small and largely independent telephone companies in the United States (serving approximately one-half of the land area of the country), the Bell System dominates the more populous metropolitan market, and provides the entire country with "long distance" service through its Long Lines Division. Altogether, the Bell operating companies served slightly more than 81 percent of the telephones in the United States in 1979; in the same year, the Bell System generated approximately 83 percent of total domestic telephone operating revenues.

Today, the Bell System is the largest employer in the country outside the Federal Government, accounting for almost 1 percent of the nation's labor force (in 1977, almost 950,000 people were employed by the Bell System). In 1979, AT&T's total revenues exceeded $45 billion. This amount substantially in excess of the budget of any state of the Union, approaches 2 percent of the Country's gross national product.

The major components of the Bell System include AT&T, the Western Electric Company, Bell Telephone Laboratories, and the Bell Telephone operating companies. AT&T, in addition to functioning as a holding company, operates the Long Lines Division, which provides interstate telephone and private line service and manages the overal telephone network, and the General Departments, which perform planning, administrative, and advice-rendering functions. AT&T and Western Electric each own 50 percent of the stock of Bell Telephone Laboratories, the chief research and development facility for the Bell System, and by far the largest such facility in the United States. Bell touts this vertically integrated system as a major factor in maintaining the excellent phone system now in operation in this country.

AT&T owns 100 percent of the stock in Western Electric Co., the nation's eighteenth largest industrial corporation and the largest manufacturer of telecommunications equipment. Western Electric currently manufactures telephone wires and cables; various electronic devices, including integrated circuits, transistors, switches and relays; numerous types of telephone-related equipment, such as PBXs, telephones, key systems, data modems, and automatic call directors; office switching equipment; transmission equipment; and equipment utilized in carrying bundles of telephone, data, or television signals between distant points. Recently, Western Electric has begun production of a sophisticated terminal device (Dataspeed 40/4) with substantial computer capabilities. Most of Western Electric's sales are to AT&T's Long Lines Division and to the Bell System operating companies.

AT&T also owns 100 percent of the stock in 17 telephone operating companies throughout the United States. On August 20, 1980, AT&T announced a plan to acquire the remaining outstanding stock in the four additional operating companies in which it held only a majority interest. Once consummated, the Bell System will own all of the stock in 21 operating companies, and will continue to hold a significant minority interest in two additional operating companies. These companies, serving 81 percent of the Nation's phones, earn revenues through local and interstate phone service and from directory advertising. Virtually all of the operating companies' telecommunications equipment is purchased from Western Electric.

2. Other Telephone Operating Companies

The largest network of telephone operating companies outside the Bell System is that of GTE, which currently owns operating companies providing service to approximately 8.6 percent of the Nation's phones. GTE, like Bell, has a manufacturing subsidary which provides telecommunications equipment to its local operating companies. United Telecommunications, the second largest independent holding company, served 2.6 percent of the Nation's phones in 1979.

Together with GTE and United, the some 1,500 smaller or independent telephone companies serve the 19 percent of the Nation's phones not served by the Bell companies. Most of these smaller companies have no manufacturing facility and must purchase telecommunications equipment from the Bell System or other manufacturers. Strictly speaking, these companies are not competitors of the Bell System since each enjoys its own local monopoly in providing telephone service. Each company has its own "settlement and separations" agreements with the Bell System Long Lines Division, providing for the sharing of revenues from long distance calls.

B. WESTERN UNION CO.

Western Union held a monopoly on domestic telegraph and teletypewriter service until 1979, when the FCC opened the domestic record market to competition. Use of traditional telegraph service has been declining in recent years. The company, however, now operates other transmission facilities, including data services and private line voice service. It now operates satellites as a part of its domestic communications system.

C. OTHER TELECOMMUNICATIONS CARRIERS

The telecommunications industry today includes a significant number of other companies that compete with AT&T and Western Union in providing data, broadcast, and voice communication services. Among them are specialized common carriers such as MCI, Southern Pacific, and IT&T, which have developed interstate transmission facilities competitive with the Bell System's Long Lines Division. Like the Long Lines Division, these companies rely heavily on microwave transmission for long-range communications. Despite the presence of these other market entrants, AT&T still controls 90 percent of the private line market.

Domestic satellite carriers, such as RCA American, Western Union, American Satellite Corp., Comstar, and SBS, compete with AT&T in providing video and audio transmission services as well as private line services, either through their own satellites or through leased facilities. On an international scale, Comsat provides similar satellite services. International record carries such at ITT Worldcom, RCA Globcom, Western Union International (not affiliated with Western Union), Graphnet, Telenet, and FTC (French Telephone) also provide international record (that is, non-voice) and private line service.

D. RELATED INDUSTRIES

There are a number of industries which, while themselves not telecommunications carriers, are involved in related businesses. Many firms involved in the manufacture, installation, or servicing of terminal equipment are members of the North American Telephone Association. Firms in this industry, often known as the "interconnect" industry, may sell and install an internal telephone system that "interconnects" with the outside telephone network. Such a company may compete against a local telephone company providing similar service, but must also rely on that telephone company to provide access to the outside telephone network.

Within the more traditional computer industry, a large number of firms are also involved in the manufacture, sale or servicing of computer equipment linked to telecommunications services. A separate branch of the computer industry involves some 4,000 companies (with annual revenues approaching $10 billion) which provide data processing services to customers. All of these companies (with the possible exception of IBM, which plans to construct its own transmission network) rely upon the transmission lines now available through AT&T, Western Union, and the specialized common carriers to provide data transmissions for their computers.

V. Testimony at the Hearings Concerning the Antitrust Issues

Prior to the hearings on H.R. 6121 before the Subcommittee on Monopolies and Commercial Law, Chairman Rodino singled out three major antitrust issues for special attention: (1) the potential impact of H.R. 6121 on the pending antitrust litigation brought by the United States against AT&T, seeking divestiture of major segments of the company; (2) the impact of H.R. 6121 in lifting the 1956 consent decree settling earlier antitrust litigation brought by the United States against AT&T; and (3) the adequacy of the separate subsidiary mechanism created by H.R. 6121 to establish and maintain competition in markets in which AT&T would now be free of regulated tariffs.

During hearings held on September 9 and 16, the Subcommittee heard oral testimony from 17 witnesses and received written statements from some 15 other interested parties. The Assistant Secretary of Commerce, the Vice President and General Counsel of AT&T, and Congressman Van Deerlin and Broyhill, both sponsors of H.R. 6121, testified generally in favor of the reported bill. The written statement of the International Communications Workers also strongly favored the bill. Another witness, Assistant Attorney General Litvack, echoed the Administration's support for some aspects of the bill, but expressed serious concerns about the antitrust ramifications of certain provisions. Most of the remainder of the persons submitting oral or written statements, although generally favoring some deregulation of the industry, testified against enactment of H.R. 6121 in its present form. Among these witnesses were the Chairman of the FCC, a former Attorney General and a former Assistant Attorney General (both in office at the time *United States* v. *AT&T* was filed), two former chiefs of the FCC's Common Carrier Bureau, the Director of the Federal Trade Commission's Bureau of Competition, a representative from Consumers Union, two members of the House Commerce Committee who had sponsored the original (and far simpler) version of H.R. 6121, and a significant number of competitors and customers of the Bell System.

A. POTENTIAL IMPACT OF H.R. 6121 ON UNITED STATES V. AT&T

According to information supplied the Committee by an AT&T representative, there are 26 pending court proceedings in which a party has made an antitrust claim against the AT&T organization. An additional 12 such proceedings are said to be inactive or to have been referred to a regulatory agency. According to the testimony of AT&T Vice President and General Counsel Howard J. Trienens, only a small number of these 38 proceedings involve "major" antitrust claims. Mr. Trienens expressed confidence concerning AT&T's position in this litigation.

In the last 12 months, judgments were entered against AT&T in the *MCI Telecommunications Corporation* case and the *Northeastern Telephone* case. Four other cases have been settled by AT&T during the same period, including a major proceeding brought by IT&T.

In the *Northeastern* proceeding, now on appeal to the Second Circuit Court of Appeals, the jury found that Bell had priced products below cost to drive out competitors, required the use of "protective" couplers designed to discourage use of non-Bell equipment, manipulated price and quality of telephone service to customers of competitors, and committed other predatory or anticompetitive practices. In the *MCI* case involving similar allegations, the jury awarded *MCI* a verdict of $1.8 billion, the largest such award in the history of the Sherman Act. That case is now on appeal to the Seventh Circuit Court of Appeals.

The most substantial of the pending antitrust actions against AT&T is that brought in 1974 by the Department of Justice, *United States v. AT&T*, Civil Action No. 74–1698 (D.C.D.C.). As in the case of the 1956 action, the government alleges violations of the Sherman Act and seeks divestiture of the Bell System's manufacturing operations (Western Electric). However, the complaint also seeks divestiture of AT&T's long lines division, and of some or all of the 23 telephone operating companies owned by AT&T.

The case was assigned to Judge Joseph Waddy and, during the early months, proceeded slowly through a series of procedural and discovery disputes. After the death of Judge Waddy in 1978, the case was reassigned to Judge Harold Greene. Pre-trial discovery has now been completed. The Court has recently urged the parties to negotiate a series of stipulations by which they agree that certain facts and contentions are uncontroverted. This stipulation process is intended to lessen the areas of dispute which must be resolved during the trial phase.

At a status conference on September 5, 1980, Judge Harold Greene agreed, at the request of the parties, to postpone the trial date from October to mid-January of 1981. During that conference, Assistant Attorney General Litvack made an appearance to confirm to the Court the Department's commitment to a prompt and expeditious trial. The lead attorney for AT&T also expressed his belief that this case could be tried in a manner that would restore confidence in the courts as a vehicle for trying major antitrust litigation.

In contrast to the relief sought in the antitrust suit, H.R. 6121 will require no divestiture of any sort; indeed it permits AT&T to enter into new areas of business activity previously limited by the 1956 consent decree.

There are other substantial differences in the legislation's approach to structural changes. In the lawsuit, the Justice Department seeks structural changes based upon the underlying structure of AT&T and the industry as a whole. Thus, three areas of operations are singled out in the complaint: (1) long distance or long line operations (currently under the control of AT&T's Long Lines Division); (2) manufacture of telecommunications equipment (currently AT&T's Western Electric subsidiary); and (3) local operating telephone companies (currently under the control of the 23 Bell operating companies). H.R. 6121, in contrast, distinguishes between basic and enhanced telephone services (only enhanced or non-basic services would be transferred to the separate subsidiary). These enhanced services, however, would include certain manufacturing operations (now under Western Electric), certain long distance type services (now within AT&T Long Line Division) and certain local services (now performed by the Bell System's local operating companies). Because this approach to restructuring differs so drastically from that proposed by the Department of Justice, some observers believe it will influence the Court, directly or indirectly, to limit its relief in a manner consistent with the legislation. Such an impact has been the publicly stated legislative objective of the Bell System.

Testimony concerning the impact of H.R. 6121 on the litigation focused on the savings clause (Section 9) initially proposed by the Department of Justice. While there was considerable difference of opinion on the nature and degree of any potential impact, the witnesses generally agreed that a court would have to consider the changes in the structure of the industry imposed by the legislation in determining what relief would be appropriate in the judicial proceeding. No witness was able to say with certainty that action by Congress on this bill would not influence the court's decision.

Assistant Attorney General Litvak testified in response to a question from Chairman Rodino that "the antitrust savings clause does just what it's intended to do. It preserves our antitrust case and the options available to us." But Mr. Litvack also stated that a judge addressing questions of appropriate relief would have "to consider changes that may be made by legislation, . . . by FCC regulations, or . . . by the passage of time." He concluded, however, that if the Department established violations not "dealt with" in the legislation, the court should grant the requested relief.

This view was shared by Assistant Secretary of Commerce Geller. Mr. Geller stressed that the court would be free "to act on the record before it." At the same time he agreed that whatever is done by the Congress "will be taken into account by the Court."

In his statement before the Subcommittee, AT&T's General Counsel, Mr. Trienens, restated Bell's view that Congress, not the courts, ought to decide the question of the restructuring of the Bell System. He also testified that H.R. 6121, as reported by the Commerce Committee, rejected Bell's view and, through the Savings Clause in Section 9, indicated that the legislation is intended to be neutral on the question of structural relief in the law suit. Mr. Trienens stated that Section 9 leaves the Judge free to do anything "that he could otherwise do, including structural relief." At the same time, in opposing divestiture in the court proceeding, he indicated that Bell "will rely on everything that has increased competition in the last decade, including what either the FCC does in the absence of this bill, or what this bill does, which would make it more orderly."

In a written response to a question submitted after the hearing, Mr. Trienens agreed with a statement of the Chairman of the Board of AT&T, Mr. Charles Brown, that there is an "inconsistency" between H.R. 6121 and the pending litigation. According to Mr. Trienens, the inconsistency lies in fact that the Department of Justice seeks "total horizontal and vertical divestiture of the Bell System," whereas H.R. 6121 "preserves the horizontal and vertical integration of regulated activities." Mr. Trienens concluded that the "fundamental inconsistency between the bill and the antitrust suit" could be resolved by replacing the savings clause with "lanugage that leaves questions of Bell System structure within the exclusive jurisdiction of Congress."

Witnesses for companies which are competitors or customers of Bell testified that H.R. 6121, by prescribing limited structural changes for AT&T, could have a severely dampening effect upon the judge's determination of the appropriate structural relief. This was the view, for example, of former Attorney General William B. Saxbe, testifying on behalf of the North American Telephone Association. Mr. Saxbe was the Attorney General in 1974 when the AT&T proceeding was filed.

Similar concerns were voiced by two antitrust experts who do not represent interested parties. Professor Louis Schwartz, a former Justice Department official now teaching at the University of Pennsylvania Law School, testified that a court which "put its head in the sand" and ignored a congressional enactment permitting AT&T's conglomeration "would be violating its duty." The court would have to account for such congressional action "not because relief was unavailable or had been narrowed by statute, but because longstanding antitrust law tells the court (A) to be cautious about divestiture; and (B) to take everything relevant into consideration, including what Congress has done." Professor Schwartz concluded that if he were confronted with such a bill as a Justice Department official, he would attempt to "get out of the pending antitrust suit with a consent decree that looks pretty good (and) doesn't have too obvious a giveway quality."

Professor Thomas Kauper of the University of Michigan Law School, who was head of the Antitrust Division at the time the pending AT&T case was filed, expressed similar concerns in a letter to Chairman Rodino. Professor Kauper noted that as a "purely technical, legal matter, the savings clause may adequately express" the intention of Congress not to have any negative impact on the pending legislation. "But a judge in an antitrust case cannot wholly ignore policy judgments reflected in the legislation. Nor could he or she ignore structural changes made in response to the legislation, particularly in fashioning relief."

Another concern with a possible adverse impact was expressed in a letter from the Comptroller General, Mr. Elmer B. Staats, to Chairman Rodino. Mr. Staats indicated that legislation such as H.R. 6121 could adversely impact upon the litigants by impelling a consent settlement incorporating the legislated restructuring, "even where the evidence in the trial might indicate another structure would be preferable."

B. THE EFFECT OF SECTION 218 ON THE 1956 CONSENT DECREE

In 1949, the Government undertook a major antitrust initiative against the Bell System by filing an antitrust complaint seeking divestiture of AT&T's major manufacturing subsidiary, Western Electric. After the law suit had been pending for a number of years, the Antitrust Division apparently received instructions to settle the litigation without divestiture. In 1956 a consent decree was agreed to by the Department of Justice and entered by the district court in New Jersey. That consent decree, still in effect today, permits continued ownership by AT&T of Western Electric and the some 23 operating companies, but precludes AT&T from entering into operations other than "communications services and facilities * * * the charges for which are subject to public regulation."

In 1958, this Subcommittee, under former Chairman Celler, held hearings on the 1956 consent decree. At those hearings, officials from AT&T and the Department of Justice testified concerning their understanding of the decree. Thus, Mr. Horace P. Moulton, AT&T Vice President and General Counsel, testified that the consent decree's limitations were of "the greatest importance, not because of what we have had to go out of, but the impact that this may have on the future of this business." He further testified that any new inventions, such as the transistor, could not be used by Bell "outside the common carrier field" (Hearings Before the House Antitrust Subcommittee on the Consent Decree Program of the Department of Justice, 85th Cong., 2d sess., part II, vol. XII, at 2423–24).

A report issued by this Subcommittee at the conclusion of the hearings seriously criticized both the substantive terms of the final decree and the procedures by which it was negotiated:

> Upon all the evidence adduced in the committee's investigation, the consent decree entered in the A.T. & T. case stands revealed as devoid of merit and ineffective as an instrument to accomplish the purposes of the antitrust laws. The decree not only permits continued control by A.T.&T. of Western, it fails to limit Western's role as the exclusive supplier of equipment to the Bell System, thereby continuing monopoly in the telephone equipment manufacturing industry. In so doing, the decree abandons the theory of the Government's complaint, which has neither been refuted nor withdrawn, that severance of Western from A.T.&T., competitive bidding in the procurement of equipment, and displacement of Western as exclusive supplier are essential to the elimination of monopoly and the restoration of competition in the industry. Report of the Antitrust Subcommittee of the Committee on the Judiciary, on the Consent Decree Program of the Department of Justice, at 290 (January 30, 1959).

That report also found that virtually "every significant idea that was adopted by the Court in this case originated with the defendants." Notwithstanding the decree's deficiencies, the Committee deemed it "imperative that, as long as this decree remains outstanding it be vigorously enforced in the public interest." Id., at 291, 294.

Antitrust settlements or agreements involving AT&T have been major watersheds in that company's history. The 1956 consent decree, and the testimony concerning that decree during the 1958 hearings, have taken on even more significance because of the Bell System's desire to enter the data processing field. In the FCC's Computer II decision in May of this year, the Commission construed the 1956 consent decree to permit the Bell System to enter this field. The validity of this interpretation, and the FCC's authority to construe an existing judicial decree, have been challenged by a number of petitioners seeking judicial review of the Commission's decision.

There was little disagreement among the witnesses concerning the impact of Section 218 of the bill on the consent decree. Assistant Attorney General Litvack testified before the Monopolies Subcommittee that Section 218 of H.R. 6121 would "effectively" wipe out the 1956 consent decree. Assistant Secretary Geller agreed that AT&T was unhappy with the consent decree and seeks to "overrule" it by legislation.

Except for the testimony of the AT&T representative and the Assistant Secretary of Commerce, the witnesses who addressed the issue at the hearings expressed strong misgivings about the lifting of the 1956 consent decree. On behalf of AT&T, Mr. Trienens testified that modification of the 1956 consent decree, which he described as placing "a fence around the Bell System," was in the "national and public interest." In response to a followup question, Mr. Trienens stated that Congressional modification of a consent decree would be warranted where broad national interests are affected. He further urged that delay in taking legislative action would leave unresolved questions concerning the decree and would not be in the national interest.

Mr. Trienens did not respond to a written question as to how Bell would be handicapped had it first applied to the District Court for modification of the decree before seeking legislation. He did indicate that AT&T has never made such an application to the district court, but did not explain the reason for this failure. When asked whether changes in marketplace conditions since the 1956 decree was entered would be grounds for judicial modification, Mr. Trienens indicated that "a proper construction of the Consent Decree would permit the Bell System to operate in a manner which reflects the confluence of communications and data processing technologies."

The views of the administration witnesses were sharply divergent on the question of lifting the consent decree. Assistant Secretary Geller testified, in line with the views of AT&T, that modifying the consent decree was a matter of "national policy" for Congress to determine and that such legislative action would serve the "national interest". Mr. Geller agreed that AT&T has never responded to the Department of Justice's invitation to seek judicial modification of the decree entered by the district court. He further testified that there may be no need for legislation or judicial modification of the decree if the picture "is construed the way the FCC has done [in the Second Computer Inquiry]."

Assistant Attorney General Litvack testified that the Department of Justice had "not seen any evidence that satisfies us that that decree should be modified or changed. Therefore, I am not prepared to agree to a modification or change." In a subsequent dialogue with Congressman Railsback, Mr. Litvack elaborated:

> I personally, and the Department of Justice, have not been persuaded in our litigation responsibilities which we have that the decree should be modified. No one has made that case. That is the Department's view. That is the Division's view. That is my personel view.

Mr. Litvack further testified that he was convinced that nothing had changed since 1956 to eliminate the anticompetitive incentives that underlay the 1956 decree. Since the decree was entered by a court, he preferred "to see the court deal with that decree." But he agreed with Congressman Seiberling that if the Congress were to revise the decree by legislation, it should hold hearings "as to the competitive effects of revision."

Mr. Litvack also raised the question of the possible negative impact of legislative action lifting a consent decree entered by the court. While he reiterated his belief that Section 218 would not impact upon the existing antitrust suit, he expressed concern about the psychological impact of legislative action upon other companies subject to consent decrees. Such companies might be encouraged to "come to Congress and ask for legislation in effect undoing" the decrees.

The Chairman of the FCC, Mr. Charles D. Ferris, indicated that there is sufficient flexibility in the 1956 consent decree to allow pursuit of deregulation policies. He cited the FCC's decision in the Second Computer Inquiry as evidence of the fact that no legislative modification of the decree is required. Mr. Ferris suggested that vacation or modification of the decree could be postponed pending the outcome of the antitrust case between the government and AT&T.

The competitors and users of the Bell System testified uniformly against modification of the consent decree. Their views, largely consistent with those of Assistant Attorney General Litvack, were that the consent decree should not be lifted absent divestiture or other effective safeguards that would prevent abuse of a dominant market position by a deregulated Bell System. Testimony of some of the witnesses suggested that Congress can not constitutionally modify a judicial decree interpreting underlying statutes except by modifying the underlying statutes themselves. Because the savings clause (Section 9 of H.R. 6121) provides that the underlying antitrust laws would not be altered, it was suggested that Section 218 would be interpreted as an unconstitutional attempt to modify the decree itself.

C. ADEQUACY OF THE RESTRUCTURING OF THE DOMINANT CARRIER IN H.R. 6121 IN ASSURING VIGOROUS COMPETITION

Prior to the hearings, questions were raised whether the separate subsidiary to be established under H.R. 6121 could ensure that the Bell System operates fairly as a competitor in a deregulated environment. Underlying this concern was an awareness of the overall size of Bell (one of the largest companies in the world with annual revenues now in excess of $45 billion), the strategic position of the company (with a dominant position in local and long distance transmission services and facilities, and a 60 percent share of the terminal equipment manufacturing business), and the past antitrust record of the company.

In commenting upon the separate subsidiary approach embodied in H.R. 6121, Assistant Attorney General Litvack wrote to Chairman Harley Staggers of the Commerce Committee in February of this year:

> While a step in the right direction, separate subsidiaries clearly are an imperfect substitute for the fundamental structural and ownership changes the Department is seeking in the AT&T case. Thus, a requirement of separate subsidiaries cannot eliminate the incentive of such subsidiaries to discriminate in favor of their affiliates or of AT&T to seek to circumvent regulatory constraints on its behavior. A more effective means to remove both the incentive and the ability to engage in anticompetitive behavior is some form of divestiture—which, of course, is the objective of the government's AT&T case.

According to the dissenters who opposed a favorable report of H.R. 6121 by the Commerce Committee, the most fundamental flaw of the bill is its failure to require adequate structural safeguards between parent and subsidiary. Thus, they point out that the bill allows the parent and subsidiary to have a common director on the two boards of directors (interlocking directors among companies in related lines of business are prohibited by section 8 of the Clayton Act), to share a common overall corporate strategy, to rotate management employees, to have common stock incentive plans for employees of both firms, to share common basic research facilities, to file a consolidated federal tax return, and to use a common logo in institutional advertising.

A major concern raised at the hearings was that the continuation of these integrated activities would leave AT&T in a position to cross-subsidize the activities of its subsidiary with revenues obtained from its monopoly rate base. Such cross-subsidization, if realized, could be devastating to AT&T's smaller competitors operating without subsidy.

The division of activities between the parent and subsidiary was also questioned. Instead of following the traditional structural markets of the industry (local telephone service; long lines service; manufacture of telecommunications equipment), the bill adopts a definition of "basic" and "enhanced" telephone services. This division will permit Bell's subsidiary to engage in certain aspects of local service, long lines service, and equipment manufacturing, just as the overall corporate organization does today. Because Bell might concentrate all its unregulated activities in a single subsidiary, such an entity could be many times the size of its next largest competitor in the unregulated markets.

During the hearings, the Subcommittee heard widely divergent views concerning the viability of the separate subsidiary concept. The Vice President and General Counsel of AT&T testified that the existing safeguards in the bill concerning the separate subsidiary "go far beyond what is necessary to meet the objective of preventing cross-subsidy." He urged that excessive restrictions would "unduly reduce productivity and economic efficiency" and thus become anticompetitive.

While testifying that the separate subsidiary mechanism is "intended to prevent anticompetitive cross-subsidy," Mr. Trienens stated that H.R. 6121 is not a "divestiture bill; and fully separated subsidiary remains a part of the Bell System." Thus, he stressed inter alia that AT&T would be free to provide its separate subsidiary preferential treatment with respect to "basic research and overall corporate management functions," to rotate management employees in and out of the separate subsidiary, to lend money to the separate subsidiary, to utilize the common corporate logo and benefit from common institutional advertising, to share property, and to engage in joint ventures. Mr. Trienens testified that the FCC would have adequate authority under the bill to prevent cross-subsidies in connection with these shared activities. He strongly opposed suggestions that the FCC be given additional authority.

The Department of Commerce, in its Primer on proposed telecommunications legislation, recognized the importance of authorizing the FCC to require more than one subsidiary and to impose additional safeguards to ensure competition. More recently, in communications to the Committee on Interstate and Foreign Commerce, the Department has stressed that "telecommunications is a dynamic field, and requirements set down today may prove inadequate in the future." Thus, the Department has urged that the Commission "should retain the flexibility to take further actions or to modify specific requirements on the basis of experience or changed circumstances."

At the hearings, Assistant Secretary Geller supported the separate subsidiary mechanism and the accounting controls intended to prevent cross-subsidization. In line with the earlier Department of Commerce statements, Mr. Geller did urge the Subcommittee to approve an amendment to H.R. 6121 which would give the FCC flexibility to alter the parent-subsidiary relationship in response to changing competitive conditions.

In response to questions, Mr. Geller indicated that the separate subsidy could be viewed as an "accounting device." He made clear his view that while H.R. 6121 was intended to require arm's length dealings between the parent and separate subsidiary, the bill

> does not minimize the influence of the dominant, parent firm. There is no question on that. The parent corporation fully controls the subsidiary. It is not meant to change, in any way, incentives.

Mr. Geller also testified that the FCC probably would need additional resources in order to monitor the accounting records reflecting dealings between the parent and subsidiary.

FCC Chairman Ferris testified that H.R. 6121 was "fundamentally flawed" in its approach to the separate subsidiary issue:

> H.R. 6121 fails to recognize the limits of separate subsidiaries. Consequently, I believe this legislation is fundamentally flawed. Section 219, 214, and 211 of this bill include provisions that to a significant extent explicitly preclude—and in fact remove existing—Commission authority to change competitive safeguards to meet new circumstances.

Chairman Ferris further suggested that H.R. 6121, as reported by the Commerce Committee, went well beyond the Computer II decision in deregulating telecommunications services, many of which he felt were not now "workably competitive." Because of these deficiencies, Chairman Ferris preferred "no legislation" to the bill reported by the Commerce Committee.

Chairman Ferris urged a much narrower approach to H.R. 6121. If the FCC's interpretation of the 1956 consent decree were accepted, he urged that legislation addressing the issues concerning the structure of AT&T could be deferred pending conclusion of the antitrust litigation, a position similar to that taken in Chairman Rodino's letters to the Commerce Committee. Alternatively, Chairman Ferris urged amendments to section 211, 214, and 219 that would extend the FCC's flexibility in determining the number and structure of separate subsidiaries; regulate the relationship of the separate subsidiaries with other entities in the Bell System; adjust the time periods for transition before the separate subsidiary becomes fully operational; and deal with questions of capitalization and other possible sources of cross-subsidization involving the separate subsidiaries.

Assistant Attorney General Litvack offered still another view on the question of separate subsidiaries. He testified that separate subsidiaries, although possibly a step in the right direction, do not address the basic structural problems addressed in the suit brought against AT&T:

> The establishment of separate subsidiaries cannot eliminate the incentive of such subsidiaries to discriminate in favor of their affiliates, or the incentive of AT&T to seek to circumvent regulatory constraints on its behavior.

In response to a question from Congressman Volkmer, Mr. Litvack also stated:

> I have grave doubts * * * about the ability of a separate subsidy to work even in the limited fashion in which the legislation is designed, namely, to deal with cross-subsidy.

When asked whether he could offer alternatives to divestiture that would satisfactorily resolve structural problems, Mr. Litvack responded:

> We see basic structural relief as the answer. A separate subsidiary in our minds, while a step in the right direction, doesn't and can't, by definition, deal with the problem. So short of divestiture, I really have no solution.

Two other government agencies offered the Subcommittee the benefit of their views on separate subsidiaries through written letters to Chairman Rodino. By letter dated September 5, Comptroller General Elmer B. Staats described an ongoing study of the FCC by the staff of the General Accounting Office, expected to be completed in March 1981. As a part of the study the GAO is examining the effectiveness of the FCC in controlling anticompetitive behavior by dominant common carriers.

Based upon information gathered by the GAO Study, Mr. Staats responded to several questions proposed by Chairman Rodino. He indicated that—

> From a purely structural perspective, a separate subsidiary requirement does not guarantee a competitive marketplace because it does not significantly change the incentives of a firm upon which it is imposed. The requirement does not impart an incentive to operate the subsidiary in a manner that would detract from the overall profitability of the parent corporation. Therefore, if the parent firm has an incentive to exercise its market power to the disadvantage of consumers and competitors * * * it has the same incentive to do so with a separate subsidiary * * *

The Comptroller General concluded that separation, if accompanied by adequate safeguards, "can reduce—but cannot eliminate"—the ability of dominant firms to engage in anticompetitive practices without detection.

The Comptroller General discussed a middle ground between divestiture and the separate subsidiary requirements—a limited equity participation of the parent firm. The FCC employed such a device in two decisions—*CML Satellite Corp.* 51 FCC 2d 14 (1975) and *Satellite Business Systems*, 62 FCC 2d 997 (1977).

> In both cases the agency's concern was specifically to encourage a vigorously competitive attitude on the part of participants in joint ventures by requiring the equity participation of parties possessing no obvious incentives not to compete to the fullest extent or to seek some sort of accommodation with other market participants. In both instances, the Commission imposed as a condition that no partner should have less than a 10 percent ownership interest or more than

a 49 percent ownership interest or otherwise be in a position to exercise de facto control.

This structural safeguard has an inherent intuitive appeal and certainly merits further consideration. However, its practical benefits remain largely unexplored and unevaluated, since the instances in which it has been employed have yet to be translated into significant market presences.

Should the Congress desire to move in the direction of separate subsidiaries, the Comptroller General suggested that a number of additional questions would have to be addressed if the mechanism was to be effective. Among these questions were (1) the necessary flexibility in FCC authority to adjust the structure of the subsidiary to a changing competitive environment; (2) the number and form of separate subsidiaries (i.e., the scope of activities that each subsidiary would be allowed to carry on); (3) the determination of which common carriers are dominant and therefore required to establish separate subsidiaries for their deregulated operations.

The Comptroller General's letter also pointed out that if the separate subsidiary approach were adopted, the FCC would likely have to expend significant additional resources to carry out its mandate of regulating the relationship between parent and separate subsidiaries.

By letter dated September 16, 1980, the Subcommittee received views on the separate subsidiary issue from the Director of the Federal Trade Commission's Bureau of Competition, Mr. E. Perry Johnson. Mr. Johnson expressed substantial doubt whether the separate subsidiary could prevent cross-subsidization or other forms of competitive abuse. He also raised doubts about the approach of H.R. 6121 in allowing entry by the dominant carrier into all telecommunications fields, regardless of the structure of individual markets, or the rapidly changing competitive conditions in those markets. While the letter made no specific proposals for amendment, it raised three possible approaches for strengthening the safeguards of H.R. 6121:

(1) a legislative provision for a speedy administrative or judicial process for releasing AT&T from the provisions of the 1956 consent decree on a market-by-market basis;

(2) a requirement that the antitrust agencies be consulted or competitive impact statements be prepared, subject to specified time limitations, before AT&T is permitted to enter unregulated markets; and

(3) a provision for continued administrative or judicial oversight of the affected markets.

The Subcommittee also heard testimony from two private consultants who were formerly Chiefs of the FCC's Common Carrie
Bureau. Mr. Bernard Strassburg expressed skepticism whether th
FCC has the ability to monitor effectively the accounting records o
a dominant carrier. Citing the massive size of the regulated institution and the multimillion dollars involved in daily transactions, M
Strassburg concluded that the FCC, despite good intentions, ha
failed to achieve a record "with any distinction" in conducting suc
monitoring.

Mr. Walter Hinchman testified that the sort of economic regulation discussed by Mr. Strassburg "is really impossible." He concluded that "some restructuring along the lines of divestiture is essential" if there is to be an effective competitive market. Mr. Hinchman was convinced that even if the FCC's powers and resources to monitor the separate subsidiary were expanded, no accounting methodology could be devised that could ensure a truly arm's length transaction between parent and subsidiary.

Finally, the Subcommittee heard testimony from a number of businessmen who are customers or actual or potential competitors of the Bell System. These witnesses testified strongly in favor of divestiture, or, in the alternative, for maintaining strong regulatory authority over the actions of AT&T in deregulated markets. Many of the witnesses stressed that their very existence was dependent upon the willingness of the integrated Bell System to provide equipment or service on competitive terms and that Bell, as a competitor, had an affirmative incentive not to do so. For example, a witness for the Association of Data Processing Service Organizations testified that his industry, involving 4,000 companies with revenues approaching $10 billion per year, is "totally dependent upon one single means of delivering their product to the public. That vehicle (private line service) is controlled by AT&T." The Chairman of the Board of MCI Corporation, a company also dependent upon the Bell System for interconnection of its competing private line service, recited portions of his company's difficulties in dealing with the Bell System and in antitrust litigation against AT&T.

A number of these industry witnesses also pointed to the impossibility of preventing cross-subsidization between the parent and separate subsidiary. For example, the statement submitted on behalf of the Control Data Corporation indicated that the Bell System, as the result of its monopoly rate base, has an effective federal tax rate of 9%. This rate could be shared with the separate subsidiary through the filing of consolidated returns, and might create an unfair competitive advantage when compared to the 46% average marginal tax rate for Bell's competitors.

D. OTHER ANTITRUST ISSUES

While the testimony at the hearings focused upon the three major antitrust issues outlined by the Chairman, a number of related issues were raised in the oral and written testimony submitted to the Subcommittee.

Several witnesses expressed concern about the type of activities that would be deregulated and assigned to the separate subsidiary created under H.R. 6121. Letters from the President of the Public Utilities Commission of the State of California and from a representative of the Consumer Union objected to a provision of the bill which would deregulate directory (yellow page) advertising, a service which now contributes substantial amounts to the revenues of local phone companies. Quite aside from whether there could be effective competition for directory advertising long controlled by local phone companies, the letters expressed concern that the loss of the advertising revenue could increase individual phone bills by substantial amounts. In

California, the amount of likely increase was estimated at $12 per year per customer.

The General Counsel of the Bell System singled out provisions in H.R. 6121 which have the effect of preventing the Bell System from competing at all in certain markets. For example, Section 218, while lifting the constraints of the 1956 consent decree, would impose an absolute prohibition on Bell's offering of "electronic yellow pages," a computerized classified advertising service in which some newspapers now compete. Mr. Trienens testified that such a prohibition, which unlike the consent decree could not be modified by the courts to account for changing competitive conditions, would be "anticompetitive."

Finally, the Subcommittee heard concerns expressed about the definition of "dominant carrer" in Section 202 of the bill. That definition would apparently subsume only the Bell System, accordingly imposing only on Bell the obligation to conduct deregulated activities through a separate subsidiary. FCC Chairman Ferris testified that "other transmission carriers, including carriers with control over local telephone exchange facilities, posess a degree of market power and should be subject to some structural or other limited regulatory safeguards." In the Computer II decision, the Commission determined that not only AT&T, but also GTE, should be subject to the requirement to establish a separate subsidiary.

VI. COMMITTEE ACTION

Following the completion of the hearings before the Subcommittee, the members, confronted with a rapidly approaching deadline on sequential referral, had a number of available options. Recognizing the substantial antitrust issues raised in the hearings and at the same time acknowledging the strong support for some form of telecommunications legislation, the Subcommittee was prepared to consider amendments to H.R. 6121 addressed to the antitrust concerns.

Among the possible amendments were the proposal in Chairman Rodino's July 21 letter to strike sections 214(a), 214(c), 218 and 219 from the bill. This proposal, strongly supported by many customers and competitors of the Bell System, would have effectively postponed legislative action on the critical antitrust issues to allow the courts and the FCC additional time to resolve important pending matters, including *United States v. AT&T*. The Bell System, however, joined by Assistant Secretary Geller, believed that the important questions of industry structure should be addressed legislatively at this time.

The Subcommittee was also prepared to address alternative amendments including:

(1) a proposal to create an FCC review mechanism to determine on a market-by-market basis which industry sectors should be deregulated (in line with testimony of FCC, FTC, and others);

(2) a proposal to defer action on the 1956 consent decree to allow the parties an opportunity to negotiate a resolution or apply to the district court for necessary modifications (supported by the Assistant Attorney General and numerous other witnesses);

(3) a proposal to restore the authority of the FCC to control the structural relationship between parent and subsidiary and to

otherwise provide the FCC with necessary authority to react to changing competitive conditions (in response to testimony of the Assistant Secretary of Commerce, the Chairman of the FCC, etc.);

(4) a proposal to strengthen the savings clause (section 9) by making specific reference to the restructuring provisions of H. R. 6121 that might otherwise be construed to limit the court's authority to grant appropriate relief;

(5) a proposal to amend the declaration of purpose to specify Congressional intent that the restructuring in the bill was intended to be provisional, subject to further structural changes which a court finds necessary under the antitrust laws;

(6) a proposal to limit the parent's equity ownership in the subsidiary to a maximum of 49 percent (as suggested in the Comptroller General's letter); and

(7) several proposals dealing with the problem of separation and cross-subsidization between the parent and subsidiary corporations, particularly the issues of the filing of consolidated tax returns, the subsidiary's use of the parent's logo, the sharing of management personnel, joint ventures in advertising, the ability of the subsidiary to borrow at lower interest rates available to or through the parent, the sharing in the benefits of the parent's research activities, and even the attribution of yellow-pages revenues to the subsidiary.

The decision to report H. R. 6121 adversely was taken because members of the Subcommittee and full Committee came to the conclusion that the bill was either not acceptable in its present form, or required substantial additional study before proceeding. After two hearings and two Subcommittee caucuses, it was evident that resolution of the antitrust problems in the bill would require consideration of complex amendments and could involve a major rewriting of the legislation to which considerable time should properly be devoted. It was further apparent that the bill was of critical importance to AT&T and its customers, competitors, and potential competitors. There would have been very little opportunity, however, to test Committee solutions against the testimony of witnesses and the views of interested parties. There was, finally, the virtual certainty that the Senate would not act in this Congress, regardless of what the House did, because of time constraints and a publicly announced plan to postpone necessary hearings until the next session of Congress.

For these reasons, the Subcommittee, by unanimous voice vote of members present, decided to report this bill adversely but without prejudice to the consideration of legislation in the 97th Congress. A majority of Subcommittee members expressed the belief that a legislative solution to the problems arising out of the merger of telecommunications and computer technology is both possible and desirable, given the time to do the job properly.

The full Committee reached essentially the same conclusions on September 30. With a quorum present, the Committee, by voice vote, ordered the bill reported adversely, but without prejudice to consideration of telecommunications legislation in the next Congress.

VII. Information Submitted Pursuant to Rules

A. BUDGET ESTIMATE

Pursuant to Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representaives, the Committee adopts the following statement of the Committee on Interstate and Foreign Commerce from its favorable report on this legislation:

> The reported bill authorizes appropriations of $750,000 for each of the fiscal years 1982, 1983, 1984, and 1985, with regard to public participation in Commission proceedings and $500,000 for each of the fiscal years of 1982, 1983, 1984, and 1985 with regard to public participation in the transition joint board proceedings.

B. COST ESTIMATE

The Committee concurs with the estimate provided by the Congressional Budget Office and adopts that estimate as the cost estimate of the Committee for the purpose of clause 7 of House Rule XIII.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., October 7, 1980.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives 2137 Rayburn House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6121, the Telecommunications Act of 1980.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Congressional Budget Office Cost Estimate

October 7, 1980.

1. Bill number: H.R. 6121.
2. Bill title: Telecommunications Act of 1980.
3. Bill status: As ordered reported adversely by the House Committee on the Judiciary, September 30, 1980.
4. Bill purpose: H.R. 6121 would make numerous changes in the regulation and structure of the telecommunications industry by amending the Communications Act of 1934. It would free the American Telephone and Telegraph Company (AT&T) from a provision of the 1956 consent agreement with the federal government that prohibits AT&T from competing in unregulated communications makets. Section 219 would restructure AT&T over a transition period of 8 years, creating a separate subsidiary in an effort to eliminate cross subsidies between regulated and unregulated activities. H.R. 6121 would also deregulate competitive telecommunications carriers and would define

the role of the Federal Communications Commission (FCC) in the deregulation process. Section 231 would establish a Transitional Joint Board (TJB) to assist in the transition from separation and settlements to a system of access charges.

5. Cost estimate:

[By fiscal years, in millions of dollars]

Estimated cost:	
1981	7
1982	11
1983	10
1984	8
1985	5

The costs of this bill fall within budget function 370.

6. Basis of estimate: For the purposes of this estimate, it is assumed that enactment of H.R. 6121 will occur around December 1, 1980.

In preparing a cost estimate on H.R. 6121, it is necessary to separate the costs that would accrue to the federal government as a result of this legislation from the costs that would have occurred in the absence of any new legislation. For example, the FCC has already begun the process of deregulating telecommunications carriers as a result of its Second Computer Inquiry decision and Competitive Carrier ruling. Thus, recent actions by the FCC have clearly established a trend in the direction of creating a more competitive marketplace, and it is likely that additional resources would be required to implement current rulings.

A major issue affecting potential costs of the bill is the role the federal government will assume in the transition process. Relying upon the private sector to ensure an equitable allocation of costs and revenues would reduce the resources required by the federal government, but at the same time would probably result in extensive litigation, or perhaps even delay creation of a competitive environment, consistent with the intent of the legislation. The level of involvement will ultimately be decided by the Congress, particularly through the appropriations process.

Finally, although H.R. 6121 may reduce the resources required by the federal government in the long term (since the marketplace would become more responsible for determining the availability, quality, and cost of telecommunications services), it is expected that some initial short-term costs will be incurred. Thus, in the first 6 to 10 years after the date of enactment, additional personnel will be required by the FCC and the TJB to ensure an efficient and equitable transition process.

Outlined below are the major items in H.R. 6121 which have a potential cost impact. Costs are adjusted for overhead, benefits, and inflation.

DEREGULATION OF NON-DOMINANT CARRIERS

Section 213 establishes a deregulation process for non-dominant carriers. The FCC has already established such procedures regarding competitive carriers in its Competitive Carrier ruling; therefore, it is assumed that the data needed for economic analysis required for this task is or would be available for determining the status of a carrier. Costs for reviewing applications or revision of the rule-making to conform with the act are not expected to exceed $100,000 in fiscal year 1981, and to be minimal thereafter.

DEREGULATION OF AT&T

As a result of the Second Computer Inquiry, the FCC is already implementing some of the reforms directed by the bill, i.e., allowing AT&T to enter the data processing and terminal equipment markets, although requiring AT&T to establish a separate subsidiary(s) for this purpose. Currently in the process of reconsideration, the expanded market proposal may take years to resolve. H.R. 6121 would provide a legislative mandate for these changes, while specifying the requirements of the separation.

The FCC will require more different kinds of data, as well as a more detailed cost reporting system, in order to adequately assure compliance of the AT&T separation process. This new system would be required without enactment of H.R. 6121, although probably not as soon. The resources needed to regulate AT&T and its subsidiaries will certainly not be less, and may likely be even more than that currently required, depending upon the degree of surveillance desired. FCC legal costs would likely decrease if H.R. 6121 were enacted, since potential litigation resulting from current appeals would be avoided. On the other hand, as separate AT&T subsidiaries are set up, the FCC may be faced with additional requirements to regulate the boundaries of separation, especially in the area of financial transactions, as well as required to handle litigation resulting from due process.

TRANSITIONAL JOINT BOARD (TJB)

Section 231 would establish a five-member TJB, consisting of three FCC commissioners and two state commissioners, with responsibility for administering the transition to a system of access charges. The Board would be established 90 days after enactment and continue operations for 6 years, after which time its authority and responsibilities would revert to the FCC.

H.R. 6121 authorizes the TJB to appoint staff, but does not specify a limit on the number, nor authorize any appropriations for this purpose. It is estimated that the TJB would require a staff director and clercial support, and that each commissioner would require a minimum of three staff, including an attorney, a financial analyst or accountant, and clercial support, for a total TJB cost of approximately $700,000 in fiscal year 1981, $1.4 million in fiscal year 1982, and $2.0 million in each remaining fiscal year. It is assumed that the TBJ would establish an office in Washington, D.C., although meetings would be held periodically throughout the United States. It is also assumed that the two state commissioners would remain on the state payroll, with travel and per diem provided by the TJB. Additional staffing requirements are itemized, as necessary, in the following sections.

EXCHANGE BOUNDARIES

The TJB has authority to make minor modifications to rules regarding establishment of boundaries for those exchanges which encompass two or more Standard Metropolitan Statistical Areas (SMSAs) or more than one state. Under H.R. 6121, the states have been given the authority to set these boundaries, and it is assumed that most of them will find it in their interest to do so. It is expected that the level of involvement by the TJB will be minimal, and could be done by two professional staff members at a cost of approximately $100,000 in fiscal years 1981 and 1982.

REMOVE TERMINAL EQUIPMENT FROM RATE BASE OF CARRIERS

In the Second Computer Inquiry, the FCC began a process of ordering AT&T and General Telephone and Electronics (GTE) to remove terminal equipment costs from their rate bases. Similarly, the TJB would be required to develop a transitional plan for the equitable recouping of terminal device costs. H.R. 6121 would require the removal of all terminal equipment costs from all rate bases, however. The results are important if cross-subsidization by carriers is to be avoided. Consequently, the TJB would probably need to contract out cost studies to establish the value of the terminal equipment for determining depreciation reserves.

Additionally, it may be necessary to ensure compliance with the rules set up by the TJB, although this would be required even without H.R. 6121. What the legislation would do is affect the timing of the process as well as require some additional workload, although that increment is hard to measure. It is estimated that the cost of the studies, plus implementation and compliance requirements resulting from H.R. 6121, would range between $1 million and $4 million annually in each fiscal year 1981 through 1984, depending upon the degree of monitoring conducted. For purposes of this cost estimate, it is assumed that the cost would be approximately $1.0 million in fiscal year 1981, $2.0 million in fiscal year 1982, and $3.0 million in both fiscal years 1983 and 1984.

ACCESS FEES

The TJB is authorized to make modifications in the Separations Manual and Division of Revenue procedures, which provide a mechanism for determining the total revenue requiremnts of each exchange carrier for access by interexchange services. Currently, the FCC is reviewing access charges, but the legislation would require more sophisticated cost accounting by carriers in order to deal with both intrastate and interstate tolls. It will be necessary to identify the cost components, determine subsidies, and equitably redistribute revenues. The change in the allocation of costs and different boundaries will also require further rewriting of the Separations Manual, an industry guideline to costing principles. Previously updated in 1971 within one year, the FCC now estimates the process will take approximately three years, given the newly created competitive and technically sophisticated market. It is estimated that five professionals, plus clerical support, will be required for the first three years at an estimated cost of $300,000 annually over and above those resources which would be required without the legislation.

It will be necessary to develop a new methodology for allocating costs between the new jurisdictional boundaries. Once a cost allocation system has been devised, revenues can be divided up and allocated to carriers. Since each carrier's profit is at issue, however, many may demand the right to participate in rewriting the procedures. States may also desire to become involved. Probably a minimum of 20 additional staff, at a cost of approximately $1.5 million per year in fiscal years 1981 through 1983, would be required just to monitor the activities of the industry. Depending upon the accountability desired by the Congress, and the degree to which the FCC and the carriers become involved in the process, the costs could be significantly higher.

The TJB also has the responsibility to allocate joint and common costs for each exchange carrier for providing access for interchange services. The FCC currently has a methodology it uses to distribute costs, but would need to sample and verify the data necessary to develop procedures for cost allocations. The resources required to carry out this responsibility depend to a great extent upon the number of exchanges as well as the number of carriers within each exchange. Even without enactment of H.R. 6121, the FCC would need to address this problem, although currently the FCC is planning only to set the formula for cost allocation and not determine individual cost allocations. It is not possible at this time to measure the additional cost of this provision, if any.

A key role of the TJB will be to devise a formula to determine the amounts which must be paid by interexchange carriers over and above access fees. The excess becomes part of the National Telecommunications Pool (NTP), and will be redistributed to carriers to ensure that local and long distance rates do not go up substantially during the transition to a cost-based access charge. Widespread disagreement is expected over the formula for division of the revenues. Consequently, in the short term, the TJB wil probably need additional staff to oversee the activities of the carrier to guarantee a fair nad efficient distribution system. If the carriers are allowed to run the system without adequate oversight, it is conceivable that smaller entities could suffer severe dislocation. Once the distribution formula is in place, however, staffing needs might lessen. A professional staff of 25, plus clerical support, at an estimated cost of $1.5 million in fiscal year 1980 and $2.0 million in each fiscal year 1982 through 1986, would probably be a minimum requirement.

TARIFFS

The FCC will be required to approve, disapprove, or modify tariffs for selected regulated carriers. A cursory review could be done with existing staff; a review which includes verification of the cost allocation process in light of the new competitive marketplace would require additional staff. An increase in effort, however, would likely be offset by a decrease in workload resulting from deregulation of carriers, as authorized in H.R. 6121. It will be necessary for the FCC to protect the public rate base and to protect the boundaries between the dominant carrier and its subsidiary(s) even without the legislation, however.

UNIFORM SYSTEM OF ACCOUNTS

The FCC is required to establish a chart of accounts to ensure a proper allocation of costs among various telecommunications services, facilities, and products. The FCC must revise its Uniform System of Accounts, but it is not likely that this process could be completed within the 2-year time period (as mandated by H.R. 6121) without additional resources. According to the FCC, approximately 30 additional staff would be required to comply with the mandate, at an estimated cost of $2.0 million in each fiscal year 1981 and 1982.

PUBLIC PARTICIPATION

The bill authorizes $750,000 annually for public participation in FCC proceedings and $500,000 annually for TJB proceedings beginning in fiscal year 1982 and continuing through fiscal year 1985.

7. Estimate comparison: None.
8. Previous CBO estimate: On August 20, 1980, the Congressional Budget Office prepared a cost estimate on H.R. 6121, as ordered reported by the House Committee on Interstate and Foreign Commerce on July 31, 1980. The costs are identical in both versions of H.R. 6121.
9. Estimate prepared by: Mary Maginniss.
10. Estimate approved by:

C. G. Nuckols
(For James L. Blum.
Assistant Director for Budget Analysis).

C. INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have an inflationary impact on prices and costs in the operation of the national economy, except to the extent that FCC costs for regulation of the newly restructured dominant carrier may be increased.

D. OVERSIGHT STATEMENT

There are no formal oversight findings by the Committee pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives.

No oversight findings have been submitted to the Committee by the Committee on Government Operations pursuant to clause 2(l)(3)(D) of the Rules of the House of Representatives.

VIII. AGENCY COMMUNICATIONS

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C.

B-200146
CED O-371

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: In response to your August 19, 1980, request we are furnishing a brief description of our ongoing study of the Federal Communications Commission's program for regulating domestic telecommunications common carriers and providing our comments on certain aspects of H.R. 6121, the Telecommunications Act of 1980.

In our study of the Commission's domestic telecommunications common carrier program we are reviewing two areas. In the first area we are assessing the Commission's effectiveness in implementing a traditional rate-of-return/rate base regulatory program for common carriers. We are examining its activities regarding (1) setting an allowed rate of return; (2) assessing the reasonableness of operating expenses; (3) approving additions to the rate base; (4) approving accounting and depreciation practices; and (5) judging the reasonableness of individual tariffs.

The second area of our review concerns the regulatory problems associated with the introduction of competition in interstate telecommunications. In particular, we are examining the actions the Commission has taken to prevent anticompetitive behavior against new entrants by dominant common carriers. These actions include (1) the creation of cost standards to judge the reasonableness of rates and to prevent cross-subsidy; (2) the revision of the Uniform Systems of Accounts; and (3) the use of separate subsidiaries as an additional safeguard against cross-subsidy or other anticompetitive actions. Our current estimated completion date is March 1981.

H.R. 6121 would amend the Communications Act of 1934 to make certain revisions in the Act relating to the regulation of telecommunications activities. Our comments on the specific questions you raised on H.R. 6121 follow.

Question 1. Do you believe that such a fully-owned, separate subsidiary as would be established by the bill will remove the apparent incentives for anticompetitive practices that have caused much of the antitrust litigation in this industry, including the pending suit brought against AT&T by the United States?

Fully separated subsidiaries do not in and of themselves remove or fundamentally alter whatever incentives may exist for a firm to exercise anticompetitive behavior. From a purely structural perspective, a separate subsidiary requirement does not guarantee a competitive marketplace because it does not significantly change the incentives of a firm upon which it is imposed. The requirement does not impart an incentive to operate the subsidiary in a manner that would detract from the overall profitability of the parent corporation. Therefore, if the parent firm has an incentive to exercise its market power to the disadvantage of consumers and competitors in the absence of a separate subsidiary, it has the same incentive to do so after the separate subsidiary has been required.

Utilization of separate subsidiaries as a structural regulatory device as proposed in H.R. 6121, nevertheless, constitutes a recognition of the incentives for abusive exercise of market power and an attempt to render the exercise of such power more difficult, if not impossible. Although the separate subsidiary requirement does not alter incentives, it attempts to impose separations and boundaries between regulated monopoly and unregulated non-monopoly activities in such a way as to give visibility to transactions which take place across the boundaries and to illuminate instances of anticompetitive behavior. Such separation, combined with certain additional safeguards, can reduce—but cannot eliminate—the ability of dominant firms to engage in predatory business practices or to do so without detection.

The extent to which the separate subsidiary device is able to reduce the ability of dominant firms to behave anticompetitively depends on two primary considerations:

(1) the nature of the specific safeguards, conditions, and mechanisms attached to particular separate subsidiary arrangements, and

(2) the ability of the regulatory agency, with the benefit of self-interested competitive policing by industry participants, to monitor and insure compliance with separation requirements and associated conditions, as well as to detect and punish violations.

The precise safeguards, conditions, and mechanisms to be applied in specific cases—apart from such basic and indispensable requirements as separate cost accounting systems, separate books and records, separate directors, officers and employees, and separate physical plant—will have to be based on a clear and precisely focused view of the nature of competition in particular markets and submarkets as well as on a systematic analysis of the sources of and opportunities for anticompetitive behavior by particular market participants.

Question 2. Are there alternative forms of restructuring, such as divestiture or a mandatory limit on the amount of equity owned by the parent, which could or would more effectively protect the public interest?

In considering alternative structural arrangements directed at fostering competition (competition being broadly identified with the public interest in the pending legislation, as well as in recent Federal Communications Commission "deregulatory" initiatives and in economic theory generally) it may be useful to envision a continuum ranging from divestiture at one extreme to laissez-faire at the opposite extreme.

The single most distinguished characteristic of divestiture, apart from the immediate increase in the number of competitive market participants which it engenders is the elimination of the incentives and opportunities for cross-subsidy and other forms of anticompetitive behavior which exist in a large, integrated firm possessing monopoly power. Balanced against this must be the potential advantages of integration (efficiencies produced through reduction of production and transactions costs) which are lost through fragmentation of the integrated firm.

The most distinguishing characteristic of laissez-faire is the presence of a large number of competing firms or the presence of a large number of viable substitutes for the product or service. In today's telecommunications industry, a large number of competing firms are not present, and there exists the potential for abuse of market power. Thus, the current market structure in the industry is such that it is some distance from the laissez-faire concept of the marketplace.

Between these two extremes, lie a range of structural possibilities which represent, not so much alternatives, as degrees of separation and stringency of conditions designed to foster and protect competition. The separate subsidiary approach represents a compromise, a middle ground, which seeks to preserve potential economies and efficiencies of integration and at the same time protect against potential anticompetitive consequences made possible by integration and exercise of unfettered market power.

One type of condition or safeguard which has been discussed as a means of influencing competitive incentives has to do with limiting the degree of equity participation of the parent firm(s). This mechanism has been employed by the Commission in both its 1975 *CML Satellite Corp.* decision (51 FCC 2d 14) and in its 1977 *Satellite Business Systems* decision (62 FCC 2d 997). In both cases the agency's concern was specifically to encourage a vigorously competitive attitude on the part of participants in joint ventures by requiring the equity participation of parties possessing no obvious incentives not to compete to the fullest extent or to seek some sort of accommodation with other market participants. In both instances, the Commission imposed as a condition that no partner should have less than a 10 percent ownership interest or more than a 49 percent ownership interest or otherwise be in a position to exercise de facto control.

This structural safeguard has an inherent intuitive appeal and certainly merits further consideration. However, its practical benefits remain largely unexplored and unevaluated, since the instances in which it has been employed have yet to be translated into significant market presences.

The effort to determine the appropriate number of separate subsidiaries and grouping of business activities within these subsidiaries as well as to fashion additional conditions and safeguards will have to be derived from a thorough analysis and understanding of such considerations as the present industry structure, the number and size of market participants, the nature of and trends in technology, competition, and demand for services.

Effective structural arrangements and competitive safeguards can only be fashioned, it would seem, based on a precise understanding of the sources of market power and the opportunities and potential for anticompetitive behavior. Likewise, contnued flexibility in modifying, augmenting, or relaxing safeguards would appear to be a necessity in order to adapt institutional arrangements to continually evolving circumstances and to maintain an appropriate match and balance between imposed requirements and the competitive exigencies of the marketplace.

Question 3. Are there other problems which you foresee with the form of separate subsidiaries established in H.R. 6121?

While historically dominated by a single firm, the communications industry has been opened by Commission and court decisions to new entrants. New firms have penetrated certain submarkets, most notably private line services and terminal equipment; however, their market share remains low and domination by a single firm continues. In other submarkets only the potential of competition exists. Advances in technology can be expected to improve the competitiveness of certain submarkets; however, the timing and impact of these advances are not clear. With this background of potential but still nascent competition, we believe the separate subsidiary approach in H.R. 6121 raises the following questions:

> If the separate subsidiary concept is intended to foster competition by mitigating the potential for anticompetitive behavior, should the Commission, the regulatory authority charged with protecting the public interest, be limited in its ability to adjust the structure of the separate subsidiary to reflect and foster the developing competitive environment?
>
> If the Congress wishes to establish a specific form for separate subsidiaries, have all alternative forms of the separate sub-

sidiary approach been adequately explored? For example, would an approach which provides for separation between exchange service operations, interexchange service operations, and terminal equipment manufacturing and sales more effectively mitigate potential anticompetitive behavior?

What factors should be included in defining dominance and effective competition as part of determining the requirement for and timing of separate subsidiaries? Should such factors include control of local, bottleneck facilities as well as the size and number of competitors and their potential ability to provide readily substitutable service?

Accompanying the structural changes in H.R. 6121 are certain conditions aimed at mitigating and illuminating areas of anticompetitive behavior. These conditons raise the following questions:

What distinguishes a fully separate subsidiary as envisioned in H.R. 6121 from a conventional corporate division with respect to top management direction, strategic planning, and control—all areas where the separate subsidiaries' vigor as a competitor may be compromised?

What will be the financial relationship between the parent corporation and the separate subsidiary? Specifically, will financial assistance, a major potential area for cross-subsidy, be provided at market rates? What entity will evaluate the terms of initial or ongoing financial assistance to assure that the terms are fair? What sanctions can be used to deal with violations in this area?

Are the provisions regarding the Commission's authority over the proposed plan establishing the separate subsidiary adequate to assure, among other things, an accurate and fair valuation of assets to be transferred to the separate subsidiary? How much control will the Commission have over future changes in the plan?

If a separate subsidiary develops a significant facilities network, where the public interest would be served by interconnection with other carriers, should there be provisions for interconnection without the Commission having to reimpose the full panoply of regulation?

Question 4. Are you aware of any studies relevant to these questions concerning the competitive benefits of separate subsidiaries?

The Commission has employed separate subsidiaries since its *First Computer Inquiry* decision in 1971. A review of these decisions can provide an understanding of the Commission's reasons for imposing separate subsidiaries and the specific abuses at which the Commission aimed particular conditions. These decisions are:

First Computer Inquiry, 28 FCC 2d 267 (1971);
Domestic Satellite, 35 FCC 2d 844 (1972);
Communications Satellite Corp., 45 FCC 2d 444 (1974);
U.S. Transmission Systems, 48 FCC 2d 859 (1974);
CML Satellite Corp., 51 FCC 2d 14 (1975);
RCA Global Communications, 56 FCC 2d 660 (1975);
ITT Domestic Transmission, 62 FCC 2d 236 (1976;
Satellite Business Systems, 62 FCC 2d 997 (1977); and
GTE-Telenet Merger Authorization, 72 FCC 2d 111 (1979),

Modified 72 FCC 2d 516 (1979), Reconsideration denied, 74 FCC 2d 561 (1979)

More recently the Commission's *Second Computer Inquiry* decision (77 FCC 2d 384 (1980)) also established separate subsidiaries and specific conditions for GTE-Telenet and the American Telephone and Telegraph Company (AT&T) in certain market sectors. The Commission's rationale for the separate subsidiary approach is contained in paragraph 190–270.

We are also aware of the following studies done for the Ad Hoc Committee for Competitive Telecommunications:

"Implementing Competition in Intercity Communication Services," Manley Irwin, September 1977

"The Case for Structural Reform of the Bell System as a Means of Eliminating Anti-Competitive Incentives," Donald Ward, September 1977

"Analysis of Telecommunications Industry Restructuring," A. D. Little, Inc., September 1977

Other sources include (1) the "NTIA Primer: Common Carrier Legislation Comments and Recommendations," (2) testimony given by the New York Public Service Commission's Chief Accountant in Case 27681 regarding the separate subsidiaries of Rochester Telephone Corporation, and (3) an ongoing study by the Office of Technology Assessment on the effects of communications technology developments on such issues as the dominant carrier's structure.

Question 5. Assuming that H.R. 6121 were adopted in the form reported by the Commerce Committee, do you believe that the Commission would possess adequate authority, resources, and expertise in light of its past regulatory efforts to provide prompt and effective oversight and control of the relationship between parent and subsidiary?

In our response to question 3, we raised concerns regarding the adequacy of the authority given the Commission in H.R. 6121 to oversee and control parent-subsidiary relationships. H.R. 6121 does, however, assign the Commission a number of key responsibilities which it must carry out, both during the transition phase of the bill and thereafter, to ensure the absence of anticompetitive practices between dominant carriers and their separate subsidiaries. For example, it must ensure that costs are properly assigned between the parent and subsidiary; services and products are transferred between parent and subsidiary on compensatory basis; and commercial information of value to the subsidiary is not improperly disclosed to it by the parent. While it appears likely that allowing the Commission to make available for public inspection contracts between the parent and subsidiary will facilitate the Commission's ability to recognize and deal with anticompetitive actions which may occur, it will not reduce the need for the Commission to maintain a continuing program to ensure enforcement of the bill's provisions.

Clearly, deregulation—in the sense of removal of traditional price/earnings/entry regulation from areas of business which are deemed to be lacking in natural monopoly characteristics—is not synonymous with abandonment of regulatory oversight or relaxation of regulatory vigilance. A significant continuing regualtory effort will be required to verify compliance with the various conditions and safeguards which have been put in place to ensure fair and viable competition.

During the past decade the Commission has acquired some experience in dealing with the establishment of separate subsidiaries. It has required that carriers establish separate corporate entities to furnish certain services in several decisions, as noted in the response to question 4. However, the Commission's experience in actively monitoring the transactions between a parent and subsidiary, which will likely be necessary under H.R. 6121, has been limited to an audit to formally assess GTE-Telenet's compliance with the provisions established by the Commission in the *GTE-Telenet Merger Authorization* and, an investigation required by the International Maritime Satellite Act which included, among other things, the conditions previously imposed on Comsat's establishment of a separate subsidiary.

Question 6. How would you compare the resources required for such enforcement or monitoring with those required for the current regulatory scheme of the Commission as it applies to the dominant carrier?

We have not attempted to formulate a precise estimate of the resources which the Commission would require to carry out the provisions of H.R. 6121. As noted in question 5, however, allowing dominant carriers to offer unregulated products and services through the establishment of separate subsidiaries will place new responsibilities on the Commission to ensure that such carriers do not act anticompetitively.

At the same time, the Commission will still be called upon to regulate those services which dominant carriers will continue to provide on a regulated basis. It appears that, during the foreseeable future, the Commission will at least be required to regulate basic long distance telephone service (message toll service), since it seems unlikely that such service will be subject to effective competition. Effectively regulating the provision of such service will still be a formidable task, as evidenced by the fact that in 1979 roughly 76 percent, or $10.8 billion of AT&T's total interstate revenues came from basic long distance communications. For this large residual monopoly sector, the Commission will be required to set a rate of return, review the reasonableness of expenses and rate base items, and approve tariffs.

While there may be certain economies the Commission can achieve in carrying out its regulatory activities, it appears unlikely that passage of H.R. 6121 will allow the Commission to divert any substantial number of resources from its more traditional rate base/rate-of-return regulatory activities to actively monitor the parent-subsidiary relationship. Consequently, it is likely that more resources will be necessary to carry out the monitoring functions.

Question 7. What benefits or detriment do you foresee in awaiting the conclusion of this major antitrust litigation before addressing the structure of the dominant carrier?

There are certain benefits that may accrue should legislation be delayed. One benefit from a delay in legislation would be to insure that the actions of the litigants and the course of the litigation would not be adversely influenced by a congressionally mandated organizational structure for the dominant carrier. An organizational structure enacted into law may influence the litigants to reach a compromise settlement incorporating such structure even where the evidence in the trial might indicate another structure would be preferable. Another benefit may be the establishment of an important legal precedent that might result from a decision by the court. Such a legal precedent could be a valuable addition to the body of antitrust law whether or not the court found a violation of the antitrust laws.

On the other hand we envision that certain detriments could result from delaying the legislation. Complex litigation such as this antitrust case often extends over a period of years, usually involving a lengthy appeal process. Because the outcome is uncertain, it is possible that certain decisions of dominant carriers, the Federal Communications Commission and potential competitors will have to await the conclusion of the litigation. Delays that extend over a period of years may retard to a degree the development of the industry and possibly could adversely affect the public interest.

Copies of this letter are also being sent to the Chairman, House Committee on Interstate and Foreign Commerce and the Chairman, Senate Committee on Commerce, Science and Transportation.

Sincerely yours,

ELMER B. STAATS,
Comptroller General
of the United States.

FEDERAL TRADE COMMISSION,
BUREAU OF COMPETITION,
Washington, D.C., September 16, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR CHAIRMAN RODINO: In response to your request of September 11, 1980, I am submitting on behalf of the staff of the Bureau of Competition of the Federal Trade Commission the following comments on H.R. 6121, the proposed Telecommunications Act of 1980. The views contained in this letter do not necessarily reflect the views of the Federal Trade Commission or of any individual Commissioner. As you are aware, the Commission has not in the recent past participated to any significant extent in the formulation of telecommunications policy due to the exemption of common carriers from the Commission's law enforcement jurisdiction, the grant of subject matter jurisdiction to the Federal Communications Commission, and the active involvement in this area of the Department of Justice. However, at your request, we have reviewed the competitive safeguards incorporated in the proposed legislation in light of the Bureau of Competition's experience in preserving and promoting competition in the marketplace.

H.R. 6121 seeks to address the complex issue of entry by large regulated telecommunications carriers such as AT&T into adjacent unregulated markets. The bill reflects a judgment that the presence of additional large telecommunications firms in these adjacent markets may enhance competition by promoting productivity and innovation. However, the bill also reflects congressional concern that unrestricted entry by large regulated monopolies may harm competition and consumers in both the regulated and unregulated markets through cross-subsidization or other anticompetitive mechanisms. To deal with these concerns, the bill would permit dominant telecommunications carriers to enter unregulated markets, but would require such firms to provide all services other than basic regulated telephone service through a separate subsidiary. The relationship between a dominant carrier and its subsidiary, as well as the relationship between a dominant carrier and unaffiliated firms, would then be subject to a number of specific requirements, discussed below.

On the basis of our review, the proposed legislation appears to raise at least two serious competitive concerns. First, there appears to be substantial doubt whether the separate subsidiary mechanism embodied in the bill is capable of preventing cross-subsidization, predation, discrimination, or other forms of anticompetitive conduct. Second, the legislation adopts an across-the-board approach to entry by dominant carriers into all telecommunications fields, regardless of the structure of individual markets or of potentially rapid changes in those markets. In our view, such an approach may not prove sufficiently flexible to ensure the maintenance, over time, of vigorous competition in all affected markets.

CONCERNS RAISED BY THE SEPARATE SUBSIDIARY APPROACH

In general, the entry of a large regulated firm into adjacent unregulated markets may raise a number of competitive concerns. For example, competition in the unregulated markets may be adversely affected if the firm subsidizes its unregulated activities with revenues obtained from the regulated market. Since many of the expenses of the firm and its subsidiary are likely to be shared or linked, cross-subsidization may be achieved through the disproportionate allocation of costs to the regulated sector. In addition, assuming that entry is achieved through a separate affiliate, the unregulated affiliate may obtain an unfair competitive advantage over competing firms through reduced cost of capital, preferential treatment in its dealings with the regulated firm, or other advantages that do not reflect increased efficiencies. Any of these advantages may significantly and adversely affect competition and consumers in the unregulated markets by, for example, reducing price competition or deterring innovative new entry.

Furthermore, as the unregulated activities of the firm grow in importance, the regulated firm may choose to devote increased portions of its finite capital and managerial skills to the unregulated sector, possibly to fulfill managerial desire for increased corporate growth or in the hope of obtaining the potentially higher rates of return available in unregulated growth markets. This possible capital and managerial drain from the regulated to the unregulated sector may ultimately result in the stagnation or deterioration of the regulated service, thus adversely affecting consumers of that service.

As a result of these and similar concerns, the entry of regulated firms into adjacent unregulated markets should generally be accompanied by the creation of an insulating barrier between the regulated and unregulated activities of a single firm. As indicated earlier, the present telecommunications bill erects such a barrier by requiring that A.T. & T.—at this time the only carrier that would be treated as dominant under the bill—offer all unregulated services through a separate subsidiary and by further requiring that the transactions between

A.T. & T. and its subsidiary meet a number of accounting and disclosure requirements. In addition, the bill requires A.T. & T. to offer various services and facilities to unaffiliated firms on the same terms as those services are offered to its subsidiary. However, the separate subsidiary mechanism embodied in the bill does not appear to affect the fundamental unity of A.T. & T. and its subsidiary, but rather simply increases the visibility of the relationship between them.

In our view, it is questionable whether a separate subsidiary mechanism of the type contained in the bill can be relied upon to prevent the potential anticompetitive consequences of permitting a large regulated firm of the size and market position of A.T. & T. to enter into adjacent unregulated markets, at least in the absence of effective judicial or administrative oversight. The basic problem is, of course, that the separate subsidiary mechanism does not change the underlying incentive of the firm and its managers to maximize overall firm profits by using the firm's position in the regulated market to bolster its position in the adjacent unregulated markets. As Comptroller General Staats noted in his recent letter to you commenting upon the proposed bill, so long as this incentive remains firmly in place, it is likely that no amount of separation (presumably short of total divestiture) can completely eliminate the ability of dominant carriers to engage in predatory business practices without detection.

This problem is exacerbated when the regulated and unregulated business activities of the firm and its subsidiary are closely related for, in such cases, the allocation of joint costs between the parent and the subsidiary is often a matter of judgment. This discretionary quality of cost accounting gives a tremendous advantage to the party that is initially charged with devising or, more importantly, administering on a day-to-day basis the system used to allocate joint costs between the regulated and unregulated markets. This accounting advantage may be even further enhanced when, as in the present case, both the dominant carrier and its subsidiary are likely to be very large and complex firms that engage in multiple aspects of related businesses.

In addition, it is not clear that the requirement that A.T. & T. make available to unaffiliated firms, on a nondiscriminatory basis, many of the same services that it offers to its own subsidiary is a realistic or practical one. In some instances, it is not clear that technology will permit the efficient provision to unaffiliated firms of all services that can be provided within the A.T. & T. system. In other instances, the concern is that it may not always be possible to detect critical variances in quality control, repair services, or delivery schedules.

In addition to the inherent limitations of the separate subsidiary approach, we also have some reservations regarding the specific safeguards provided in the separate subsidiary mechanism set forth in the bill. Some of the characteristics of the separate subsidiary approach incorporated in the bill that are of particular concern are:

(*a*) the failure to specify the treatment and conditions of a dominant carrier's financing of its subsidiary;

(*b*) the explicit retention of the dominant carrier's control over the managerial and planning functions of its subsidiary;

(*c*) the failure to provide for the extensive (and costly) oversight that would be required to review a dominant carrier's accounting and other procedures to ensure that cross-subsidization is not occurring; and

(*d*) the ability of a dominant carrier to conduct its activities in all unregulated telecommunications markets through only one giant subsidiary, with the resulting increase in the likelihood that cross-subsidization or other anticompetitive practices will remain undetected.

In this context, I would also like to refer the Committee to the questions raised by Comptroller General Staats on pages five and six of his letter addressing these issues. In our view, his questions are valid ones that should be addressed before the separate subsidiary approach provided in the present bill is approved. Until these questions are answered, we believe that it is far from clear that the insulation provided by the separate subsidiary approach embodied in H.R. 6121 would be sufficient to prevent, or even to permit detection of, cross-subsidization or other anticompetitive conduct between a dominant carrier and its subsidiary.

NEED FOR RESPONSIVENESS TO INDIVIDUAL MARKETS AND TO CHANGING MARKET CONDITIONS

As I have indicated, we understand that a primary purpose of the proposed legislation is to permit regulated carriers to enter unregulated telecommunications markets, with the expectation that competition, productivity, and innovation in those markets can thereby be increased. In most instances, the Bureau of Competition would strongly support new entry into such markets, for new entry is generally procompetitive. However, as I have also indicated, the entry of large, regulated firms into adjacent unregulated markets in many ways poses a special case, for such entry also brings with it significant potential for anticompetitive, rather than procompetitive, effects.

As a result of concerns of this nature, in 1956 AT&T and the Department of Justice entered into a consent decree that prohibited AT&T from entering unregulated telecommunications markets. Given recent advances in technology and the rapidly disappearing distinction between telephonic and computer technology, it is possible that the absolute prohibitions of the consent decree could be eased. Nonetheless, the decree's basic concern that AT&T's expansion into unregulated markets may afford significant opportunities for anticompetitive practices remains valid. And, as I have indicated, the separate subsidiary approach adopted in the proposed bill does not appear fully to resolve this concern.

Equally important, given the varying market structures and competitive conditions that characterize the many unregulated telecommunications markets into which AT&T may expand, it is questionable whether the problems posed by AT&T's entry into all such markets can be adequately addressed by a single legislative solution. For example, solutions that are appropriate for unregulated markets characterized by large firms and high concentration ratios may be totally inappropriate for developing markets characterized by small firms and rapid innovation. In the former instance, the entry of an AT&T subsidiary may be procompetitive and highly desirable; in the latter, it may stifle entry and deter innovation. Consequently, one of our major concerns with the proposed legislation is its failure to distinguish between different market settings when releasing AT&T from the constraints of the 1956 consent decree.

Our concern with the proposed legislation's apparent lack of flexibility in this regard is increased by the prospect of future change and developments in the unregulated telecommunications sectors or in other related markets. If there is one area of total agreement in the telecommunications field, it is that the changes that have already occurred in this sector are merely harbingers of the many technological advances that loom ahead. In addition, the contours of telecommunications markets may be altered, for better or for worse, if AT&T enters new markets as a result of FCC initiatives, judicial modification of the 1956 consent decree, or new legislation. Moreover, if ordered, the divestiture of Western Electric and AT&T's Long Lines Division sought by the Department of Justice in its pending antitrust suit against AT&T would cause even further changes in this sector. For the most part, H.R. 6121 does not appear to offer an appropriate mechanism for responding and adjusting to these and other yet unforeseen developments in telecommunications markets, should that prove desirable. I should note in this regard that, depending upon the totality of the circumstances, such adjustments might appropriately either tighten or relax the constraints on AT&T's entry and continued participation in various markets.

To allow for the differences that characterize various unregulated telecommunications markets, the changes that are likely to occur in those markets over the next decade, and the general uncertainty regarding the impact of AT&T's entry into some of those markets, we would suggest that a more flexible approach to AT&T's entry may be preferable and significantly more procompetitive than the across-the-board solution embodied in the present bill. On the basis of our review of the bill and the competitive issues that it raises, we are not in a position to suggest or endorse specific proposals, but the possibilities clearly include legislative provision for a speedy administrative or judicial process for releasing AT&T from the provisions of the 1956 consent decree on a market-by-market basis; a requirement that the antitrust agencies be consulted or competitive impact statements be prepared, subject to specified time limitations, before AT&T is permitted to enter unregulated markets; and provision for continued administrative or judicial oversight of the affected markets. I should stress that such oversight would not entail regulation of the firms in such markets, but rather would simply ensure that the rules and conditions governing the entry and participation of AT&T in unregulated markets would continue to provide, over time, for the maintenance of rigorous competition in those markets, without the need for repeated recourse to the legislative process.

In conclusion, I would reiterate that these comments are based upon our preliminary review of H.R. 6121. Our comments are not intended to address all of the difficult issues raised by the bill, but rather are meant to identify areas that merit further scrutiny and to express our concern that the bill, as presently written, does not appear fully to alleviate the potentially serious adverse competitive consequences of the entry of AT&T into various unregulated telecommunications markets.

Sincerely,

E. PERRY JOHNSON,
Director, Bureau of Competition.

ADDITIONAL VIEWS OF REPRESENTATIVE JACK BROOKS

H.R. 6121 proposes changes in FCC regulatory oversight and in the structure of communications common carriers to accomplish two goals: (1) to encourage competition in non-monopoly markets, and (2) to prevent companies (primarily AT&T), which operate in both competitive and monopoly markets, from using the profits of the latter to gain an unfair economic advantage in the former.

The sponsors of this complex legislation believe that these ends can be achieved through requiring so-called "dominant carriers" in monopoly markets (again referring mainly to AT&T companies) desiring to provide competitive services, to do so through specially created subsidiaries.

Despite claims that the purpose of this bill is to promote competition, it is clear that the effect will simply be to permit AT&T and other monopoly carriers to enter unregulated areas, such as computers, information services, and data communications. This area, commonly referred to as the information industry, is already highly competitive and consists of thousands of firms. It is also an industry that has made great advances in technology and innovation which has put this country far ahead of foreign competitors.

The sudden entry of a giant competitor the size of AT&T into this market will have a profound impact on the industry and on the consumer. It is impossible to measure that impact with any precision. In fact, the result may be exactly the opposite of what is intended. The result is as likely to smother competition and innovation as it is to enhance those objectives.

In any event, in deciding whether AT&T's entrance into this new market would promote or inhibit competition, one must consider this company's past practices. It presently is faced with numerous private lawsuits citing abuse of its monopoly power, as well as the Department of Justice's antitrust suit. Given this situation, it is questionable whether Congress should at this time consider legislation which allows AT&T to expand into other markets.

NEED FOR MORE COMPREHENSIVE LEGISLATION

Of even more concern to me, however, is the possibility that the enactment of this legislation will foreclose consideration of more comprehensive legislation needed to deal with the important issues facing the information industry. The present problems characterizing the dynamic telecommunications and computer markets can hardly be overemphasized. The essential task before the Congress, stated in its most fundamental form, is: How can we encourage the availability of increasingly vital and innovative information services to our citizens at reasonable prices, while at the same time not creating either an industrial, or on the other hand, a government, information "dictator?"

The Communications Act, now some 46 years old, is basically a scheme for regulating telephonic and radio communications. It was conceived long before data processing and telecommunications had become an integral part of our daily lives. Given the enormous changes we have witnessed in the intervening years, it is clear that the law needs to be revised and updated to accommodate these innovations.

The FCC has made sporadic and feeble efforts to exert regulatory influence on the telecommunications industry, but the efforts have been largely unsuccessful. Part of the problem arises from the unsurpassed complexity of the systems themselves and the inordinate difficulty of separating costs within these systems. Part of the problem stems from the enormous imbalance of size between the regulatee, and the regulator.

As telecommunications now begin to merge with and become indistinguishable from data processing, the problem becomes even more acute. The FCC is in a quandary about how to impose effective regulatory oversight on activities which are no longer solely identifiable with the telecommunications industry. The new information services spawned by the ongoing merger force themselves into the very core of nearly every other area of concern to Congress.

Electronic funds transfer systems promise to create a revolution in our nation's financial and banking structure. Electronic mail concepts sugest medium- and long-term changes in our postal system and in our whole concept of postal regulation. Powerful electronic networks, with their nearly unlimited capability to create dossiers and even behavior profiles, create enormous new chaallenges to ensure the preservation of individual rights.

Our national survival depends on information services which provide warning of enemy attack, intelligence about actual and potential enemy activity, and which provide the means of exercising command and control over our nation's forces. Our entire approach to national security is structured around the existence of powerful information service activities.

Despite its apparent focus on traditional concepts of common carriage, H.R. 6121 wil set in motion actions relating to all such information services. The management and market supply structure we create today, in a basically telephone environment, is the same structure we must live with in the increasingly complex information era we are now beginning to enter.

The problem of what to do about this situation, then, is much more broad in scope and complexity than is indicated by first appearances. The immediate question arises: Is H.R. 6121 a solution to the entire problem, to only a part of the problem, or to mere symptoms of the more fundamental underlying problems?

The sponsors of H.R. 6121 argue that Congress has a responsibility to address national communications and national information policy. To that argument, I heartily lend my full endorsement. However, given the broad scope of the problems in this area, I fail to see how H.R. 6121 can be considered as a statement of that policy. Rather than a policy statement which can serve to focus the fundamental discussions underlying such policy, H.R. 6121 is nothing more than a mechanical restructuring of the common carrier industry.

I am deeply concerned that H.R. 6121, notwithstanding good inten-
ons of those who worked so hard to craft it, might merely give the
smetic appearance of progress in resolving these important issues,
ithout creating any substantive improvement. I am concerned that
actment of this measure, particularly in light of the potential new
oblems it creates, might effectively foreclose additional, more com-
rehensive Congressional treatment of this essential set of issues for
ears. We cannot afford to pay that price for the as-yet unclear benefits
e might expect to receive from this legislation.

JACK BROOKS.

SUPPLEMENTAL VIEWS OF REPRESENTATIVE MAZZOLI

For several years the House Commerce Committee's Subcommittee on Communications has voted its attention to re-structuring the telecommunications industry. H.R. 6121 represents the fruit of this extensive and deliberate process.

Since H.R. 6121 has antitrust implications, the distinguished chairman of the House Judiciary Committee requested, and received, sequential referral of H.R. 6121.

However, the Subcommittee on Monopolies felt itself unable, within the time allotted on referral by the speaker, to complete its examination of the antitrust implications of H.R. 6121. Thus, the subcommittee reported the bill to the full Judiciary Committee "adversely" but "without prejudice."

Now, the full Judiciary Committee—adjudging itself not to have the time necessary in this Congress to complete a careful study of the antitrust aspects of H.R. 6121—has followed the lead of its Monopolies Subcommittee and voted to report the bill adversely without prejudice.

I was unable to attend the Monopolies Subcommittee meeting at which it took action on H.R. 6121. Had I attended, I would have been constrained to vote against an adverse report. Rather, I would have urged the subcommittee to adopt some form of a "neutral" report on H.R. 6121.

Thus, when H.R. 6121 came before the full Judiciary Committee on September 30, 1980, I voted against reporting the bill adversely but without prejudice.

I believe that, because H.R. 6121 has antitrust implications, the Judiciary Committee was correct in asking for sequential referral; but, even though the Judiciary Committee did not have sufficient time to review the antitrust aspects of the bill, the measure should not have been reported to the House [adversely].

[Rather, H.R. 6121 should have been reported to the House without comment or conclusion.]

Romano L. Mazzoli.

○

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1253

PROVIDING FOR THE CONSIDERATION OF H.R. 6417

AUGUST 26, 1980.—Referred to the House Calendar and ordered to be printed

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Mr. MOAKLEY, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 767]

The Committee on Rules, having had under consideration House Resolution 767, by nonrecord vote, reports the same to the House with the recommendation that the resolution do pass.

○

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1254

PROVIDING FOR THE CONSIDERATION OF H.R. 6628

AUGUST 26, 1980.—Referred to the House Calendar and ordered to be printed

Mr. DERRICK, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 768]

The Committee on Rules, having had under consideration House Resolution 768, by nonrecord vote, reports the same to the House with the recommendation that the resolution do pass.

○

96th **Congress** } HOUSE OF REPRESENTATIVES { **Report**
2d Session } { No. 96-1255

PROVIDING FOR THE CONSIDERATION OF H.R. 6721

August 26, 1980.—Referred to the House Calendar and ordered to be printed

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Mr. Zeferetti from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 769]

The Committee on Rules, having had under consideration House Resolution 769, by nonrecord vote, reports the same to the House with the recommendation that the resolution do pass.

59-008 O

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1256

PROVIDING FOR THE CONSIDERATION OF H.R. 6806

August 26, 1980.—Referred to the House Calendar and ordered to be printed

Mr. Beilenson, from the Committee on Rules
submitted the following

REPORT

[To accompany H. Res. 770]

The Committee on Rules, having had under consideration House Resolution 770, by nonrecord vote, reports the same to the House with the recommendation that the resolution do pass.

59–008 O

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1257

PROVIDING FOR THE CONSIDERATION OF H.R. 7668

AUGUST 26, 1980.—Referred to the House Calendar and ordered to be printed

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Mr. MURPHY of Illinois, from the Committee on Rules
submitted the following

REPORT

[To accompany H. Res. 771]

The Committee on Rules, having had under consideration House Resolution 771, by nonrecord vote, reports the same to the House with the recommendation that the resolution do pass.

59-008 O

○

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1258

THREE ADDITIONAL JUDGES FOR TAX COURT

AUGUST 26, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Way and Means, submitted the following

REPORT

[To accompany H.R. 7779]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 7779) to amend the Internal Revenue Code of 1954 to authorize 3 additional Judges for the Tax Court, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. THREE ADDITIONAL JUDGES FOR TAX COURT; REMOVAL OF AGE LIMITATION.

(a) INCREASE IN NUMBER OF JUDGES.—Subsection (a) of section 7443 of the Internal Revenue Code of 1954 (relating to the number of judges on the Tax Court) is amended by striking out "16" and inserting in lieu thereof "19".

(b) REMOVAL OF AGE LIMITATION.—Subsection (b) of section 7443 of such Code (relating to appointment to the Tax Court) is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on February 1, 1981.

Amend the title so as to read:

A bill to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.

I. SUMMARY

The bill increases the number of Tax Court judges from 16 to 19 and eliminates the prohibition on initially appointing an individual to the Court after he or she attains age 65. The bill becomes effective February 1, 1981.

66-747 O

II. EXPLANATION OF THE BILL

A. Increase in Number of Tax Court Judges

Present law

The United States Tax Court, originally established as the Board of Tax Appeals in 1924, is composed of 16 judges, who are appointed by the President for 15-year terms with the advice and consent of the Senate. The number of judges on the Court has remained constant since 1925.

The Chief Judge of the Tax Court is authorized to appoint commissioners ("special trial judges") to decide small tax cases and to assist in the work of the court. Currently, there are ten commissioners.

Reasons for change

In recent years, the workload of the Tax Court has increased significantly. Since 1974, the Tax Court has been authorized to issue declaratory judgments with respect to the status of certain organizations, employee retirement plans, municipal obligations, and the tax aspects of certain property transfers, and to decide certain disclosure actions brought against the Internal Revenue Service. The Crude Oil Windfall Profit Tax Act of 1980 extends the Court's jurisdiction to windfall profit tax deficiencies. Because of these new responsibilities, the growth of complex tax litigation (particularly in the area of tax shelters), and the increase in the number of petitions filed with the court, the committee believes an increase in the court's membership is necessary to insure the timely resolution of taxpayer disputes.

Explanation of provision

The bill increases the number of U.S. Tax Court judges from 16 to 19.

Revenue effect

This provision will have no effect on budget receipts, but the creation of three additional Court seats will increase budget outlays by an estimated $185,000 in fiscal year 1981, $565,000 in fiscal year 1982, and $770,000 in fiscal year 1985.

B. Elimination of Maximum Appointment Age

Present law

Under present law, no individual may be first appointed to the Tax Court after attaining 65 years of age.

Reasons for change

The committee believes that the prohibition on initial appointments of individuals age 65 or older conflicts with Federal policies against age discrimination and could deprive the Tax Court of experienced personnel.

Explanation of provision

The bill eliminates the ban on initial appointments of individuals age 65 or older as judges of the U.S. Tax Court.

Revenue effect

This provision will have no effect on budget receipts or outlays.

C. Effective Date

The bill becomes effective on February 1, 1981.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget Effects

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of this bill, H.R. 7779, as reported. The committee estimates that the provisions contained in the bill will have no effect on budget receipts, but will increase budget outlays by an estimated $185,000 in fiscal year 1981, $565,000 in fiscal year 1982, $665,000 in fiscal year 1983, $720,000 in fiscal year 1984, and $770,000 in fiscal year 1985.

The Treasury Department agrees with this statement.

Vote of the Committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill. The bill, H.R. 7779, as amended, was ordered favorably reported by voice vote.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 7779.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to jurisdiction of the U.S. Tax Court that the committee concluded that it is appropriate to enact the provisions contained in the bill.

The expansion of the Tax Court was the subject of public hearings by the committee on April 1, 1980.

New Budget Authority and Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill create no new budget authority. However, the bill will result in the need for increased budget authorizations of an estimated $210,000 in fiscal year 1981, $615,000 in fiscal year 1982, $670,000 in fiscal year 1983, $725,000 in fiscal year 1984, and $780,000 in fiscal year 1985. The bill involves no new or increased tax expenditures.

Consultation with Congressional Budget Officials on Budget Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advices that the Director of the Congressional Budget Office has submitted the following statement:

U.S. CONGRESS,
CONRESSIONAL BUDGET OFFICE,
Washington, D.C., August 25, 1980.

Hon. AL ULLMAN,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 7779, a bill to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

Congressional Budget Office—Cost Estimate

August 25, 1980.

1. Bill number: H.R. 7779.

2. Bill title: A bill to amend the Internal Revenue Code of 1954 to authorize three additional judges for the Tax Court.

3. Bill status: As ordered reported by the House Committee on Ways and Means, August 21, 1980.

4. Bill purpose: The bill amends section 7443 of the Internal Revenue Code of 1954 by increasing the number of Tax Court judges from 16 to 19.

5. Cost estimate:

	Thousands
Estimated authorization level:	
Fiscal year:	
1981	$210
1982	615
1983	670
1984	725
1985	780
Estimated outlays:	
Fiscal year:	
1981	185
1982	565
1983	665
1984	720
1985	770

The costs of this bill fall within budget subfunction 752.

6. Basis of estimate: For the purposes of this estimate, it was assumed that 3 additional judges and support staff would be hired by June 1, 1981, and that they would incur costs similar to other judges in the Court pursuant to section 7472 of the Internal Revenue Code of 1954.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Linwood Lloyd.

10. Estimate approved by:

C. G. Nuckols

(For James L. Blum, Assistant Director for Budget Analysis).

Oversight by Committee on Government Operations

With respect to subdivison (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

SUBTITLE F—PROCEDURE AND ADMINISTRATION

* * * * * * *

CHAPTER 76—JUDICIAL PROCEEDINGS

* * * * * * *

Subchapter C—The Tax Court

* * * * * * *

PART I—ORGANIZATION AND JURISDICTION

* * * * * * *

SEC. 7443. MEMBERSHIP.

(a) NUMBER.—The Tax Court shall be composed of **[**16**]** *19* members.

(b) APPOINTMENT.—Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. **[**No individual shall be a judge of the Tax Court unless he is appointed to that office before attaining the age of 65.**]**

* * * * * * *

Union Calendar No. 776

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1259

REPORT

OF THE

COMMITTEE ON EDUCATION AND LABOR

PURSUANT TO

SECTION 302(b) OF THE CONGRESSIONAL BUDGET ACT OF 1974

AUGUST 26, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
64-931 O WASHINGTON : 1980

COMMITTEE ON EDUCATION AND LABOR

CARL D. PERKINS, Kentucky, *Chairman*

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JOHN BRADEMAS, Indiana
AUGUSTUS F. HAWKINS, California
WILLIAM D. FORD, Michigan
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WILLIAM (BILL) CLAY, Missouri
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ARLEN ERDAHL, Minnesota
THOMAS J. TAUKE, Iowa
DANIEL B. CRANE, Illinois
JON HINSON, Mississippi
THOMAS E. PETRI, Wisconsin

LETTER OF SUBMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C., August 26, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On August 26, 1980, the House Education and Labor Committee ordered reported its allocation of budget authority and outlays assigned to it in the statement of managers accompanying the conference report on House Concurrent Resolution 307 as required by section 302(b)(2) of the Congressional Budget Act of 1974.

Attached is a copy of our report which I submit as directed by the committee today.

Sincerely,

CARL D. PERKINS,
Chairman.

Enclosure.

REPORT OF THE COMMITTEE ON EDUCATION AND LABOR PURSUANT TO SECTION 302(b) OF THE CONGRESSIONAL BUDGET ACT OF 1974

AUGUST 26, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

The Committee on Education and Labor, having been allocated budget authority and outlays in the statement of managers accompanying the conference report on House Concurrent Resolution 307 and having considered same, subdivides such allocation among the programs over which it has jurisdiction and further subdivides such between controllable amounts and all other amounts as follows:

ALLOCATION FOR FISCAL YEAR 1980

[In millions of dollars]

	Budget authority	Outlays
Sec. 302(b) allocation, uncontrollable	$32.0	$29.0
New entitlement authority, controllable		
PERMANENT AUTHORITY		
National Foundation on the Humanities: Matching grants, gifts, and donations	11.4	11.4
Occupational, vocational, and adult education	7.2	7.2
Higher education facilities loan and insurance fund	.8	0
Land grant colleges	2.7	2.7
Harry S. Truman Memorial Scholarship Trust Fund	0	−1.8
Special statistical complications and surveys	0	.1
National Commission for Manpower Policy: Gifts and bequests	.1	.1
Special workers' compensation expenses	9.7	9.0
Total, uncontrollable	31.9	28.7

ALLOCATION FOR FISCAL YEAR 1981

[In millions of dollars]

		Budget authority	Outlays
Sec. 302(b) allocation, uncontrollable		$31	$28
New entitlement authority, controllable		(−684)	
PERMANENT AUTHORITY			
National Foundation on the Arts and Humanities: Matching grants, gifts, and donations		9.5	9.5
Occupational, vocational, and adult education		7.2	7.2
Higher education facilities loan and insurance fund		.7	0
Land grant colleges		2.7	2.7
Harry S. Truman Memorial Scholarship Trust Fund		0	−2.0
National Commission for Manpower Policy: Gifts and bequests		.1	.1
Special workers' compensation expenses		10.9	10.6
Total, uncontrollable		31.1	28.1
NEW ENTITLEMENT AUTHORITY			
Function 500: Guaranteed student loan program:			
Education Amendments of 1980, H.R. 5192:			
Credit bureau referral system		−28	
Special allowances on State revenue bonds		−30	
Subtotal, H.R. 5192		−58	
Omnibus Reconciliation Act of 1980, H.R. 7765:			
Parent loan programs		−134	
State agency administrative allowances		−42	
Use of IRS addresses		−4	
Subtotal, H.R. 7765		−180	
Assumed level of new entitlement authority, H. Con. Res. 307	$1,690		
Current CBO estimate of new entitlement authority	$1,536		
Difference		−154	
Subtotal (Function 500)		−392	
Function 600:			
Omnibus Reconciliation Act of 1980, H.R. 7765:			
Child nutrition programs:			
Free and reduced price meals		−105	
Commodity assistance		−90	
Summer food program		−18	
Job Corps		−15	
Cost-of-living adjustment to reimbursement rates		−75	
Section 4 reimbursement rates		−85	
National school lunch program participation reduction		−29	
Child care program		−8	
Special milk program		−57	
Federal Employees' Compensation Act: Cost-of-living adjustment		−33	
Child Nutrition Amendments of 1980, H.R. 7664:			
Summer food program		+149	
State administrative allowance		+38	
Multiemployer Pension Plan Amendments Act of 1979		+36	
Subtotal (Function 600)		−292	
Total, controllable		−684	

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1260

REINSTATING AND VALIDATING UNITED STATES OIL AND GAS LEASES NUMBERED OCS-P-0218 AND OCS-P-0226

AUGUST 27, 1980.—Committed to the Committee of the Whole House and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 5769]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 5769) to reinstate and validate United States oil and gas leases numbered OCS-P-01213 and OCS-P-0226, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 2, after line 14, insert the following:

> (d) In lieu of the standard royalty interest payment required in each lease, the lessees shall pay to the United States a net profit share payment which—
>
> (1) shall be made in accordance with Part 390 of Title 10 of the Code of Federal Regulations and which is determined on the basis of a recovery allowance of 15 percent, and
>
> (2) shall be an amount equal to 50 percent of the net profits of the lessee under the lease as determined in accordance with such Part 390, Provided that, subject to the provisions of 45 U.S.C. § 1337(a)(3), the payment to the United States in accordance with this subsection shall in each reporting period be at least equivalent to the royalty provided for in the original leases.

PURPOSE

The purpose of H.R. 5769 is to reinstate Outer Contential Shelf leases numbered OCS-P-0218 and OCS-P-0226, located in the Santa

Barbara Channel, California, for a period equal to the unexpired portion of the original five-year lease term. The new lease period would begin from date of enactment.

BACKGROUND

The Pauley Group was created in 1967 as a joint venture by 11 independent oil companies to bid on OCS tracts in the Santa Barbara Channel. The Pauley Group was composed of Pauley Petroleum Company, as operator; Mesa Petroleum Company; Husky Oil Company; Colorado Oil and Gas Corporation; McCullouch Oil Corporation; J. M. Huber Corporation; Midwest Oil Corporation; Kewanee Oil Corporation; Ashland Oil & Refining, Inc.; MacDonald Oil Corporation; and Forest Oil Corporation.

On March 1, 1968, in exchange for a $73.8 million cash bonus payment and an annual rental of $34,560, the Pauley Group was granted an exclusive right to explore for oil and gas on two tracts in the Santa Barbara Channel for a primary term of five years and ". . . as long thereafter as oil and gas may be produced in paying quantities. . . ." The member companies of the Pauley Group and the United States executed lease number OCS–P–0218 for Tract 375 and lease number OCS–P–0226 for Tract 384.

The Pauley Group began immediate exploration and drilled eight exploratory wells between March, 1968, and January, 1969, at a cost of $4 million. In late January, 1969, when the Group was preparing to drill a ninth well, a blowout occurred several miles north of the Pauley Group tracts on a tract operated by the Union Oil Company. In response to the massive oil spill, the Secretary of the Interior suspended all drilling operations in the Channel on February 7, 1969. Ten days later, on February 17, 1969, the Secretary of the Interior altered the traditional standard of negligence for oil spills to one of strict liability applicable to all those who were operating in the Channel. This new standard of strict liability made each participant operating on the OCS jointly and severally liable not only for all clean-up costs of an oil spill, but also liable for any and all damage whatsoever to a third party, regardless of fault.

Concurrent with the issuance of this new standard of liability and the suspension of drilling operations, the private liability insurance market for offshore oil operations collapsed. As a result, the Pauley Group lost its liability insurance for offshore oil spills and was financially unable to obtain coverage from other sources. Without insurance, the independents risked financial disaster by resuming drilling operations and, thus, were effectively barred from operating in the Channel. In contrast, once the drilling ban was lifted, the major oil companies were able to resume their drilling activities because they could self-insure their operations. This step was unavailable to the independents because they lacked sufficient financial resources.

Thus, in April, 1969, the Pauley Group was confronted with a dilemma. On the one hand, the Pauley Group, forced to sit idle because the Interior Department's final decision on whether to resume drilling in the Channel was unknown and, in any case, because it was faced with the government's strict liability regulation, could elect to do nothing and wait. In waiting, however, the Pauley Group, with large amounts of their exploration budgets tied up and enormous interest payments due, risked their total investment and their financial stability. On the other hand, the Pauley Group could attempt to protect its substantial investment by seeking judicial relief for breach of contract. The risk of financial disaster was great and, on April 9, 1969, suit was filed in the United States Court of Claims.

The Pauley Group filed a petition for damages against the United States Government alleging that the United States had violated its contract with the Group by suspending drilling operations and imposing strict liability. Counts included breach of contract, frustration and mutual mistake; a fourth count of partial breach was alleged at a later time. Because damages were sought, the action was filed in the United States Court of Claims.

The Pauley Group was not the only Channel leaseholder to challenge the government's action in court. Other legal actions were filed by, among others, Union Oil Company and Gulf Oil Corporation, against the United States in California Federal District Court. These actions challenged the lawfulness of suspension orders of the Secretary of the Interior and sought injunctive relief, rather than monetary damages, against the Secretary's suspension order, and an extension of the lease terms.

The case dragged on for ten years before the court dismissed the petition on January 24, 1979. Although the court did not award damages to the Group, it did indicate the possibility of another remedy:

> Perhaps the legislative or executive branches could, as a matter of grace or policy, extend their lease-terms to permit them to drill further (if they still wish to) in the effort to discover oil in commercial quantities, but of course we cannot take that step. *Pauley Petroleum, Inc.* v. *United States*, 591 F.2d 1308, 1328 (Ct. Cl. 1979).

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

H.R. 5769, introduced by Representative Patterson, was referred to the Committee on Interior and Insular Affairs, where the Subcommittee on Mines and Mining held a hearing on March 13, 1980, receiving testimony from the Secretary of the Interior and representatives of the Pauley Group. Thereafter the Subcommittee reported the bill to the full committee with an amendment increasing the government's royalty interest from 16⅔ percent to 26 percent. On August 20, by unanimous voice vote, the Committee on Interior and Insular Affairs ordered H.R. 5769 favorably reported with an amendment substituting a 50 percent net profit share interest provision for the 26 percent royalty interest provision. As explained below, the net profit share interest provides a net profit share of 50 percent to the government with an allowance for capital recovery of 15 percent. The Committee recommends the enactment of H.R. 5769 by the House of Representatives.

NEED FOR LEGISLATION

The Committee has determined that national energy policy dictates the reinstatement of leases numbered OCS–P–0218 and OCS–P–0226. The Committee feels that the unusual 11-year history of these two leases, when coupled with the immediate need for the rapid development of domestic oil and gas resources, warrants reinstatement.

Although the Department of the Interior expressed its opposition to H.R. 5769 in a Departmental Report dated March 5, 1980, and in testimony of the Secretary before the Subcommittee on Mines and Mining, the Secretary indicated that the Department's position might be qualified if the financial terms of reinstatement were made more favorable to the government.

In reviewing the Departmental position and the Pauley Group's long effort to resume exploration of these leases, the Committee concluded that the situation warrants reinstatement of the leases, notwithstanding the Department's opposition. The Committee found that the unique relationship of the Pauley Group to these leases and the urgent need for domestic oil and gas presents a compelling case for reinstatement. A review of several of the complex factual elements of this controversy upon which the Department's objections were initially premised is set forth below.

The Department states that enactment of H.R. 5769 will encourage litigation by federal oil and gas lease holders and the introduction of more legislation similar to H.R. 5769. The Committee believes this fear to be unfounded. While Congress has on prior occasion enacted legislation reinstating Federal oil and gas leases, action has been taken only in those cases where the situation of the leaseholders was unique and the equities were compelling. The circumstances of the Pauley Group's case clearly fit both these criteria.

The Pauley Group is composed of independent oil exploration companies, many of whom individually dedicated the vast majority of their 1968 exploration budget to this highly speculative venture. After the Pauley Group had spent $80 million, drilled eight wells and was preparing to drill a ninth well, the Union Oil Company blowout occurred on a tract several miles to the north. The Pauley Group's activities were suddenly suspended, and they were faced with adverse public reaction to continued operations in the Channel and a change of policy direction by the Federal Government on drilling activities in the Channel. During this atmosphere of turmoil and confusion, the government imposed a new standard of strict liability, and private oil spill insurance was not available. The Pauley Group, being the only independents who held leases in the Channel, were barred by these circumstances from continuing their operations. The Pauley Group made the only reasonable and prudent business judgment available to them at the time and decided to seek judicial relief to protect their investment. The Pauley Group went through a decade of litigation and negotiation which failed to resolve the matter. Accordingly, legislative reinstatement appears to be the best way to resolve this unusual situation and should not encourage other litigation or legislation.

The Department states that the Pauley Group was wrong to pursue its rights in court and should have followed the example of the major oil companies, who waited until the order suspending all drilling activity was lifted and then resumed operations. However, as noted earlier, several major oil companies did file suit against the government in Federal District Court, seeking injunctive relief against the Secretary's suspension order and extensions of their lease terms. More importantly, the relief sought by the major oil companies, which would enable them to continue drilling operations, was of no assistance to the Pauley Group. The majors could continue drilling in spite of the new liability standard and lack of private insurance because they had self-insuring capabilities. The Pauley Group, on the other hand, was foreclosed from drilling because it did not have the economic resources necessary to self-insure. The Committee is satisfied that the Pauley Group made a reasonable and sound business judgment in 1969 when it sought protection of its enormous financial investment through the courts.

The Department states that the legislation is deficient because it does not indicate in whom the leases would be reinstated. However, as was brought out during the hearing, the leaseholders of the tracts in question are a matter of public record at the Department of the Interior. The leaseholders of record have not changed since 1969 when the Department specifically approved the last assignment of interest.

The Committee notes, however, that some members of the Pauley Group have either merged or been acquired by other companies. The Committee found that during the past 12 years, four of the original Pauley Group members were acquired by other companies in multimillion dollar acquisitions. In fact, three of these mergers occurred after the original leases were said to have expired in 1973. The Committee is satisfied that none of these company acquisitions or mergers were motivated by interests held in the two Santa Barbara tracts.

The Department stated that reinstatement would not result in earlier production of oil and gas sooner than if the leases were resold. However, as was made clear during the hearing, if the leases are successfully resold at the next Santa Barbara Channel offshore lease sale, which is tentatively scheduled for June, 1982, production could not begin until approximately 1986. In contrast, if H.R. 5769 is enacted, the Pauley Group is required to submit an exploration plan within 45 days of enactment, and reasonably expects to begin production by 1983.

The Department also stated that compliance with environmental regulations would delay the development of the leases under reinstatement. While the Committee shares the Secretary's dual concerns that the leases should be developed as rapidly as possible while protecting the unique environment of the Santa Barbara Channel, it fully believes that compliance with current environmental requirements can satisfy both objectives. An exhaustive five volume environmental impact statement (EIS) was prepared by the Department of the Interior for the June 29, 1979, Santa Barbara lease sale. The two leases in question are squarely within the geographic area covered by this thorough environmental study. In light of this EIS, it is highly unlikely that a completely new, costly EIS will have to be made before operations can recommence. Rather, an environmental assessment, based on the June, 1979, EIS, should be more than adequate. Moreover, every drilling application that the Pauley Group files will be accompanied by a separate review of environmental safeguards. The Committee is satisfied that compliance with these requirements will not delay lease development and will ensure maximum environmental protection for the Channel area.

The Department states that reinstatement will prevent the United States Treasury from recouping losses resulting from previous write-offs taken by the leaseholders in 1969. During the hearing, the Committee learned that in accordance with generally acceptable accounting practices, several members of the Pauley Group did take balance sheet write-offs of their 1968–69 investment costs. However, the Committee has had no indication that any of the Pauley Group members have taken a tax write-off of these expenses. It should be noted that even if some of the Pauley Group companies have taken such a write-off, then in no event could the company or its successor be entitled to deduct or capitalize such amounts again. Thus, the Committee believes that, in this regard, there will be no loss to the Treasury through the enactment of H.R. 5769. Moreover, through the net profit share, the government's increased revenues will more than account for any potential loss to the Treasury.

The Department also expressed a concern over economic benefit to the government through reinstatement. The Department based this concern on the premise that a resale of the two tracts would potentially provide a greater economic return to the government than reinstatement. The Department has taken the position, contrary to that which it maintained for over ten years in the Court of Claims, that the two leases, if successfully resold, will bring the Department a cash bonus bid even larger than the $73.8 million the Department received from the Pauley Group in 1968, and thus, the government could suffer an economic loss through reinstatement.

The Committee feels that the Department's basis for comparison is overly optimistic. The Committee noted during the hearing that in the last Santa Barbara Channel lease sale held in June, 1979, the cash bonus bids ranged from $300,000 to $16,000,000 for tracts adjacent to and nearby the Pauley Group's tracts. In fact, several of the tracts did not even receive bids, and a tract directly adjacent to the Pauley Group's tract received a bid of only $307,800.

In any case, in order to address the Department's concern with the legislation as introduced, the Subcommittee, as noted earlier, adopted an amendment increasing the government's royalty interest in the two leases from 16⅔ percent, as provided for in the original leases, to 26 percent. Subsequently, because the Committee understood and shared the Secretary's concern for a more favorable arrangement for the government, the Committee determined that a substitute amendment providing for a net profit sharing arrangement based on the Department of Energy's net profit sharing regulations (10 C.F.R. Part 390 (45 Federal Register 36783 *et seq.;* May 30, 1980)) would be more appropriate in this particular case. Under the Committee substitute, the Pauley Group, during the "capital recovery period," is permitted a "recovery allowance" of 15 percent (one-half of the maximum allowed under the regulations), and the government is provided with a 50-percent share of the "net profits." In addition, a provision is included to assure that the government receives a net profit share payment at least equal to that which the government would have reviewed through the standard 16⅔ percent royalty payment. However, to assure that maximum recovery of reserves is achieved, the Committee has provided that the government's royalty interest or net profit share can be decreased by the Secretary in accordance with 43 U.S.C. § 1337(a)(3).

The Committee believes this arrangement, coupled with the fact that the Department has had unencumbered use of the $73.8 million paid by the Pauley Group in 1968, will provide the government with a revenue level at least equal to, and probably greater than, that which might be generated if the leases were to be resold.

It should be recognized that the use of the net profit share arrangement for reinstatement of these leases is warranted solely because of the unusual and unique situation, and is not intended to be a precedent for reinstatement of any other OCS lease.

With regard to the concern raised about the effect of reinstatement on the Land and Water Conservation Fund, the Committee is satisfied that the Fund will not suffer a loss due to enactment of H.R. 5769.

The Committee notes that many of the problems which confronted the Pauley Group in 1969 have been resolved. The strict liability regulation which prevented the Pauley Group from continuing its drilling operations in 1969 have been resolved by enactment of the Outer Continental Shelf Lands Act Amendments of 1978 ("OCSLA"), Public Law Number 95-382. Title III of the OCSLA established a limit of liability for oil spills from offshore drilling operations. Title III also contained an "Offshore Oil Pollution Compensation Fund" to compensate parties injured by spills. Moreover, technological advances in offshore drilling have reduced many of the hazards of drilling in the deep water with which the Pauley Group was confronted in 1968, and have lessened the likelihood of an oil spill. Further, liability insurance for the independent companies is now economically available.

In conclusion, the Committee believes H.R. 5769, as amended, is a unique solution to an unparalleled and unprecedented case. The Committee is convinced that enactment of H.R. 5769 is in the best interests of our national energy policy, and thus, the Committee favorably recommends to the House of Representatives the passage of H.R. 5769.

SECTION-BY-SECTION ANALYSIS

Section 1, subject to the requirements of section 2, reinstates the Pauley Group's two leases, numbered OCS-P-0218 and OCS-P-0226, for 4 years, 126 days, which includes the balance of the 5-year primary term left when drilling was suspended by the Secretary of Interior on February 7, 1969. This period also includes the time extension granted all other Channel leaseholders by the Department in 1973.

Section 2 imposes three requirements upon the lessees. Section 2(a) requires the lessees to exercise "due diligence" in the exploration and development of the two leases. As an indication of "due diligence," the lessees are required to file a plan with the Secretary of the Interior which generally describes the proposed exploration and development of the leases. This plan must be filed within 45 days of enactment. The plan required to be filed by this subsection is not intended as a substitute for those exploration and development plans required by the OCS regulations contained in title 30 of the Code of Federal Regulations. Moreover, the Committee does not intend that the plan required to be filed has to be as specific or detailed as those required by the OCS regulations. Rather, the plan should describe, in general terms, the program of exploratory drilling and development to be undertaken by the lessees and a proposed time schedule of exploration and development activities.

Section 2(b) assures that these two leases are subject to all pertinent provisions of the Outer Continental Shelf Lands Act Amendments of 1978 ("OCSLA"), Public Law Number 95–372. The Committee does not intend that enactment of H.R. 5769 will supersede any of the applicable provisions of the OCSLA. However, in light of the lengthy environmental impact statement recently completed on the Santa Barbara Channel, the Committee does intend that the Secretary expeditiously review all permits filed by the Pauley Group for exploration of these leases.

Section 2(c) requires the lessees to pay back rentals for the period during which the leases were not in force. It is the Committee's understanding that the lessees paid the annual rental of $3.00 per acre throughout the five year primary term. Since the leases have been deemed by the Department to have expired in June, 1973, the lessees have not paid the annual rental. The Committee feels that it is appropriate for the lessees to pay the rental fee for the period between the time when the leases were deemed to have expired and the effective date of reinstatement. Further, Section 2(c) requires the lessees to continue to pay the $3.00 per acre annual rental while the leases are in force.

Section 2(d) revises the royalty clause of each lease. In lieu of the 16⅔ percent standard royalty interest, the Committee has included a net profit sharing arrangement based on the regulations promulgated by the Department of Energy pursuant to the Outer Continental Shelf Lands Act Amendments of 1978. Final regulations implementing the "Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases" were published by the Department of Energy on May 30, 1980. 45 Federal Register 36783. The regulations are codified at Title 10, Code of Federal Regulations, part 390.

In accordance with 10 C.F.R. Part 390, the lessees are provided with an allowance for capital recovery of 15 percent: Once the net profit payment to the United States begins, the government receives a 50 percent share of the net profits as determined in accordance with part 390. However, section 2(d) also provides that in no reporting period shall the payment to the United States ever be less than what the equivalent 16⅔ percent royalty would be for the period. The Secretary retains the authority to decrease the payment in accordance with 43 U.S.C. § 1337(a)(3).

Concern was expressed by Committee members over the method in which the windfall profits tax is treated under a net profit sharing arrangement. The Department of Energy's regulations provide that the windfall profits tax is an allowable tax. 10 C.F.R. section 390.011 (i). Since any oil produced from the two leases will be subject to the windfall profit tax as newly discovered oil, taxes assessed will be deducted from revenues before the United States receives its net profit share payment.

DEPARTMENTAL REPORT

By letter dated March 5, 1980, the Department of the Interior commented on H.R. 5769. The letter in its entirety follows:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., March 5, 1980.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on H.R. 5769, a bill "To reinstate and validate United States oil and gas leases numbered OCS-P-0218 and OCS-P-0226."

We oppose enactment of the bill.

H.R. 5769 would reinstate and validate two oil and gas leases in the Santa Barbara Channel, offshore California, which expired on June 12, 1973. These two leases were the subject of litigation between lessees and the United States for over 10 years, from April 1969 until October 1979. The bill would overturn the Federal Government's success in court.

The Pauley Petroleum Co., together with six co-bidders, purchased the leases in question in February 1968. The term of the leases was 5 years and so long thereafter as oil and gas was produced in paying quantities or drilling operations as approved by the Secretary were being conducted. During the period from March 1, 1968, until January 24, 1969, the Pauley group explored unsuccessfully for oil and gas.

On January 28, 1969, a well in the Santa Barbara Channel being drilled by the Union Oil Co. suffered a blowout. Shortly thereafter, this Department promulgated a regulation which made all OCS lessees responsible for clean-up and removal of pollutants resulting from the lessee's oil and gas operations. Pauley and five of its co-lessees (then numbering eleven) filed suit in April 1969 in the United States Court of Claims, arguing, among other things, that this regulation made it economically and technically impossible for them to undertake further drilling operations on their leases, and seeking up to $324,000,000 in damages. It is important to note that the Pauley group never attempted to obtain a court order to extend its leases, nor did it ask the Secretary to suspend operations on its leases to keep them alive. Instead, it pursued a damage remedy, and let the leases expire by their own terms when the five year lease term ran out in 1973.

After lengthy proceedings, the Court of Claims on January 24, 1979, rejected all of the plaintiffs' claims. The trial judge found, and the Court of Claims agreed, that:

> (1) Plaintiffs had not intended since mid-March 1969 to conduct further drilling operations on the subject tracts.
>
> (2) Because of the disappointing drilling results achieved on the subject tracts (the drilling of dry holes) several of the plaintiffs (co-lessees) by early 1969 wrote off their investment costs in such tracts, or otherwise adjusted their financial statements.
>
> (3) The Department of the Interior's conduct with respect to plaintiffs' operations was both authorized and responsible during the period from the Union Oil Company blowout on January 28, 1969 to the initiation of the suit on April 9, 1969, and that thereafter the Department of the Interior was entitled to assume that plaintiffs desired to litigate rather than to drill or operate.

(4) Plaintiffs did not try to ascertain the effect on them of the new regulation, nor did they wait to see if the government might clarify the regulation. They did not attempt to comply with the new procedures for clearing leases for further operations. They did not pursue their drilling application. Instead, they quickly made the worst possible interpretation of the government's actions and went at once to court with claims that the lease contracts were wholly at an end and that they were entitled to receive back their entire investment at the least, and possibly over $300,000,000 in lost future profits.

The United States Supreme Court on October 9, 1979, refused to review the judgment of the Court of Claims.

It is instructive to compare Pauley Petroleum's actions with those of other companies who bought OCS leases in the Santa Barbara Channel at the February 1968 lease sale. Eight days before Pauley filed its suit, then-Secretary Hickel approved operations on five leases in the Santa Barbara Channel, four of which had earlier been suspended. Most of the other lessees in the Channel ultimately had their leases cleared for further operations. Phillips Petroleum was given approval to resume drilling temporarily on March 3, 1969 and was allowed to resume drilling permanently on its lease in April 1969. Union Oil was allowed to drill certain reservoirs in the Channel in June and July of 1969 (on the very field that was the site of the January 1969 blowout); and Sun Oil was allowed to resume drilling on its leases on July 21, 1970. Of the 72 leases issued in the Santa Barbara Channel in 1968, 35 are still actively being explored or being prepared for production and 2 have been in production for several years.

We oppose H.R. 5769 because we believe that a legislative reinstatement of Pauley's leases would encourage litigation, and possibly the introduction or more bills such as H.R. 5769, since it would remove the risks a lessee incurs when he chooses to litigate, rather than to attempt to comply with government regulations. Other companies operating in the Santa Barbara Channel took a more reasoned approach after the Union Oil well blowout, and were soon allowed to resume operations on their leases. Pauley, however, chose to pursue a suit against the United States rather than to exercise its lease rights.

Support for a legislative reinstatement cannot realistically be based on the nation's need for oil and gas. For one thing, this argument ignores the fact that there is no legal basis for reinstating Pauley's expired leases. For another, had Pauley exercised its original lease rights and conducted further drilling activities, it might have discovered oil and gas in paying quantities and would be producing that oil and gas right now. Other lessees who successfully resumed their activities in the Channel after the Union Oil well blowout are either now producing oil and gas or are close to being at that stage. Reinstating Pauley's expired leases would reward it for choosing to initiate unsuccessful litigation rather than exercising its lease rights, the former course clearly delaying any positive contribution to the nation's supply of oil and gas that these leases could make.

We believe that the leases in question should be sold competitively in accordance with the provisions of the Outer Continental Shelf

Lands Act as amended, the National Environmental Policy Act, and other applicable law. Reinstatement of the leases in accordance with H.R. 5769 would yield only about $200,000 in unpaid accrued rental. The amount which would be received in bonus bids if the leases were resold would help support the Land and Water Conservation Fund to finance outdoor recreation projects, to acquire land and water recreation areas of national significance, and to provide matching grants to States, territories, and the District of Columbia for similar purposes. About half of the Fund's money is made available to the States under the latter provision. Bonuses from the two leases in question would not be available to support the Fund if H.R. 5769 were enacted.

We note in addition that H.R. 5769 does not indictate in whom the leases would be reinstated. This is a serious deficiency, since there have been many changes in ownership since the leases were issued. For example, Gulf Oil, Standard Oil, and Coastal States Gas Corp. all acquired interests in the leases after litigation began. Those who bought interests after the lawsuit had begun were in effect "buying into" the lawsuit. The small amounts ($50,000 for a one-tenth interest in one case; $25,000 for a one-tenth interest in another case) which they paid for their interests in the leases indicate that the purchasers believed it was highly unlikely that the pending damage suit against the government would be successful. Enactment of H.R. 5769 could provide an enormous windfall benefit to the current holders of interests in the two expired leases. The U.S. Treasury, on the other hand, could not recoup the losses in revenue which it suffered when the previous lessees of record wrote off their investments and saved themselves large amounts of money in taxes.

Enactment of H.R. 5769 would not result in the leases being developed significantly more expeditiously than if they were reoffered for sale according to the requirements of current law. Even if H.R. 5769 were enacted, an environmental assessment on each lease would have to be prepared, and a site specific environmental impact statement might have to be prepared. Consistency determinations in accordance with the Coastal Zone Management Act might also have to be made.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Cecil D. Andrus,
Secretary.

OVERSIGHT STATEMENT

The Committee on Interior and Insular Affairs will have oversight responsibility for the implementation of H.R. 5769. No recommendations were submitted to the Committee pursuant to Rule X, Clause 2(b)(2).

COST BUDGET ACT COMPLIANCE AND INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 5769 will not involve any costs or increases in budgetary requirements. No adverse impact on inflation should result. No analysis was supplied by the Congressional Budget Office on this measure.

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96th Congress
2d Session

HOUSE OF REPRESENTATIVES

Report
No. 96-1261

PROVIDING FOR THE CONSIDERATION OF H.R. 85

August 27, 1980.—Referred to the House Calendar and ordered to be printed

Mr. Long of Louisiana, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 772]

The Committee on Rules, having had under consideration House Resolution 772, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

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59-008 O

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1262

PROVIDING FOR THE CONSIDERATION OF H.R. 7020

August 27, 1980.—Referred to the House Calendar and ordered to be printed

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Mr. Long of Louisiana, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 773]

The Committee on Rules, having had under consideration House Resolution 773, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

O

59-008 O

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1263

INTERNATIONAL MONETARY FUND APPROPRIATION, 1981

AUGUST 28, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. LONG, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.J. Res. 601]

The Committee on Appropriations, to which was referred House Joint Resolution 601, making an appropriation for the International Monetary Fund for the fiscal year ending September 30, 1981, having considered same, reports thereon without amendment, and with recommendation that the resolution do pass.

RECOMMENDATIONS OF THE COMMITTEE

The Committee is recommending an appropriation of budget authority of the dollar equivalent of 4,202,500,000 in Special Drawing Rights[1] or approximately $5,500,000,000 to the International Monetary Fund. This appropriation will result in no actual net spending or outlays but budget authority only; thus there is no net cost to the U.S. taxpayer.

The committee believes that this legislation is necessary in order to continue U.S. efforts to maintain a strong leadership role in the international economic system and to provide, along with other nations, the mechanism for order and stability for the world's monetary system.

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[1] The U.S. quota in the IMF is denominated in Special Drawing Rights (SDR), the unit of account of the IMF in which all members' financial rights and obligations are established. The SDR is based on the exchange value of a basket of 16 currencies. Its U.S. dollar and foreign currency value fluctuates daily with fluctuations in exchange rates. Consequently, a fixed U.S. dollar value cannot be determined for the U.S. quota increase until the date the quota increase takes effect in the Fund (which requires consent to quota increases by members having not less than 75 percent of the total quotas of the Fund). The appropriation for U.S. consent to the quota increase therefore is expressed in SDR.

PURPOSE OF THE INTERNATIONAL MONETARY FUND

The International Monetary Fund (IMF) was established in 1944 as a result of the historic Bretton Woods Conference and was ratified by the Congress in the Bretton Woods Agreements Act of 1944.

The IMF was created as a result of U.S. initiative and leadership and throughout the years has been strongly influenced by the United States.

It is important to realize that the IMF is not a foreign aid vehicle but rather the world's only formal mechanism for promoting and preserving economic and monetary stability among nations.

The following are the basic purposes of the IMF:

To facilitate the expansion and balanced growth of international trade, the achievement of high levels of employment and real incomes, and the development of productive resources of all members;

To promote exchange stability and orderly exchange arrangements, and to avoid competitive exchange depreciation;

To assist in the elimination of exchange restrictions;

To assist members in correcting payment imbalances without resorting to measures destructive of national or international prosperity.

The role of the IMF was broadened and strengthened by amendments which became effective in 1978. These amendments were, in effect, a reaction to the vastly significant changes in the world economic order that had occurred since the Fund's inception.

The amendments provided that the IMF exercise firm surveillance over the exchange rate policies of member countries and that it oversee the operation of the international monetary system and ensure members' compliance with their general obligations including the prevention of manipulating exchange rates.

VALUE OF THE IMF TO THE UNITED STATES

The United States has drawn on the International Monetary Fund (IMF) on 24 occasions over the past 17 years for a total of about $7.5 billion, the second largest amount of cumulative drawings of any IMF member. These drawings have made an important contribution to U.S. efforts to maintain a strong dollar and a healthy U.S. economy. The U.S. drawings have been of two types: during the 1960's and early 1970's they were designed to limit foreign purchases of U.S. gold reserves; subsequently they were designed to provide us with foreign currencies needed for exchange market operations.

During the past few years the IMF has been absolutely essential to the United States. Even though the dollar has weakened in these years, there is little doubt but that the situation would have been much worse if it had not been for the IMF.

For example, in November 1978 the United States drew from the IMF $3 billion of German marks and Japanese yen to provide the needed resources for U.S. intervention in the foreign exchange market as part of the program to support the dollar against increasing speculative pressures. This was one of a number of actions that were taken at the time to support the dollar, but if the IMF resources had not been available the task would have been far more difficult and more disruptive.

Additionally, the firm fiscal guidance and assistance provided to developing and developed countries such as Great Britain, Turkey, Sudan, Liberia, Italy, Philippines, South Korea, and others have been vital in assuring a maximum degree of economic stability—economic stability which has strong economic importance to the United States.

MEMBERSHIP IN THE IMF

Membership in the IMF is open to any nation which seeks it and is prepared to meet the obligations of membership. Currently 140 countries are members of the IMF and represent essentially all of the non-Russian bloc nations of the world.

Once a nation becomes a member of the IMF, its relative strength within the organization is determined by its quota. Quotas determine the amounts countries can draw, the distribution of SDR allocations and, most importantly to the United States, voting power.

When the International Monetary System was originally established in 1944, the United States held a quota share of 34.72 percent and a voting share of 30.67 percent. This has gradually decreased through the years until now with the proposed quota increase the United States will have a projected quota share of 21.01 percent and a voting share of 19.88 percent. Because an 85-percent vote is necessary for quota changes and changes to the articles of agreement the United States will continue to hold a veto over major changes in the IMF and consequently the international monetary system.

The committee believes that this amount is sufficient to preserve the influence of the United States in the International Monetary Fund, but cautions the administration against any actions which would further weaken the quota or reduce the voting share of the United States.

It is important to realize that many countries actively seek to increase their quota shares within the IMF in order to increase their countries' influence on the world monetary system. This is quite different from other international institutions such as the World Bank and the United Nations which have different objectives and for which contributions are difficult to achieve.

REASONS FOR THE QUOTA INCREASE

IMF resources are determined by the quota subscriptions of its members. Generally, the need for IMF resources is measured by their relationship to the growth of international trade, the situation of balance-of-payments deficits and financing needs, and world economic prospects.

The following table shows the relationship of IMF quotas as a percent of world imports:

IMF quotas as percent of world imports

	Percent
1979 (estimate)	4.0
1975	4.2
1970	9.6
1965	9.1
1960	12.3
1955	9.8
1950	13.6

The proposed quota increase will change this figure to an estimated 4.9 percent in 1980, temporarily halting the decline in IMF resources relative to world trade and adding a slightly greater amount of resources to deal with the expected increase of trade deficits brought about by OPEC price increases. However, by 1985 this amount is expected to decline to 2.5 percent of estimated world imports.

In testimony before the committee, the Secretary of the Treasury, William Miller, made the following comments in support of the need for the IMF quota increase:

> Quotas had fallen to an unrealistically low level, about 4 percent of world trade compared to 12 percent earlier, during a period of massive expansion of payments imbalances and international financing needs * * *
>
> The 50-percent increase ultimately agreed in December 1978—raising total quotas from about SDR 39 billion to SDR 58 billion—will barely halt the decline in the relative size of the IMF over the next 5 years. Many countries pressed hard for a larger increase. The quota increase proposed for the United States is 50 percent, amounting to SDR 4,202.5 million or about $5.3 billion at current exchange rates, and will raise our quota from SDR 8,405 million to SDR 12,607.5. This maintains the U.S. quota share intact at 21.5 percent. Given the continuing large role of the U.S. economy and the dollar in the international monetary system, maintenance of an appropriate U.S. share and influence over decisions on the international monetary system is particularly important. An increased U.S. quota will augment the foreign exchange resources available to us should we need them for balance-of-payments purposes. Without the proposed increase in the U.S. quota, our veto power over major IMF decisions affecting the operations of the entire system could be jeopardized.
>
> Developments since completion of the quota review and the IMF Governors' resolution formally proposing the increase have only strengthened the need.
>
> We are now faced with the consequence of another round of huge oil price increases and with events in Iran and Afghanistan that greatly heighten the level of world concern and tension. These developments make it absolutely essential that we have in place the institutional framework for assuring monetary stability and providing advice and support to countries as they contend with radically altered economic prospects.
>
> Both financing and economic adjustment are going to be more difficult in this environment. The private financial markets will have to meet the bulk of expanded international financing needs—no other source is available—and development aid must continue to increase. But some countries will run into growing financing difficulties and pressures to bring their external balances into line with sustainable flows of financing.
>
> Without adequate financing, the efforts of deficit countries to adjust would necessitate curtailing economic growth so abruptly that it would cause severe human hardships and could well jeopardize the political stability of a number of countries. Countries could also be forced to adopt restrictive

trade policies in an attempt to ration the foreign exchange available to them, or to resort to aggressive exchange rate behavior. In today's interdependent world, the adoption of such policies—particularly because it could lead to retaliatory policies or emulation by other countries—could have disastrous worldwide repercussions and would be reminiscent of the self-defeating economic policies followed in the 1930's.

The task of assuring a strong and stable international monetary system in the circumstances of the 1980's will be formidable. We cannot predict the amount of IMF financing that will be needed. No one can. But we can foresee very tangible dangers to the system and to ourselves if the Fund's resources prove to be insufficient when they are called on. It is therefore critical that IMF operations in this period of stress be buttressed by prompt congressional approval of the proposed quota increase. In so strengthening the base of the international monetary system, the United States will not only be contributing enormously to an international environment conducive to effective foreign policy but will also be strengthening a source of balance-of-payments financing on which it has drawn many times itself.

THE IMF AND BASIC HUMAN NEEDS

In recent years, criticism has been directed toward the IMF about the harsh effects its agreements have on basic human needs. The feeling of some is that not enough attention is paid to the results of its agreements on the poorest people in the countries concerned.

While this is not directly within the jurisdiction of the Committee on Appropriations, it is concerned about the matter and supports the steps that the authorizing committee, the Committee on Banking, Finance, and Urban Affairs, has taken in its proposed amendments to the Bretton Woods Agreements Act.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the rules of the House of Representatives, the committee estimates that enactment of this legislation will have very little, if any, inflationary impact on the Nation's economy. In fact, it could be argued that the monetary stability this legislation will promote will actually tend to decrease inflation.

COMPARISONS WITH BUDGET RESOLUTION

In accordance with section 308(a)(1)(A) of the Congressional Budget Act of 1974 (Public Law 93-344), the following table provides comparisons between new budget authority set forth in the Concurrent Resolution on the Budget as allocated to the Committee on Appropriations under section 302 of the Act, and the fiscal year 1981 new budget authority contained in the accompanying resolution:

[In thousands]	
Section 302 allocation	$12,655,000
Amount in prior Foreign Assistance appropriations	7,273,452
Amount remaining	5,381,548
Committee recommendations	5,537,839
Amount over allocation	156,291

FIVE YEAR PROJECTIONS OF OUTLAYS

In compliance with section 308(a)(1)(B) of the Congressional Budget Act of 1974 (Public Law 93-344), the following table contains 5-year projections of the outlays associated with the fiscal year 1981 new budget authority provided in the accompanying resolution:

[In thousands]

Budget authority, fiscal year 1981	$5, 537, 839
Net outlays:	
Fiscal year 1981	-0-
Fiscal year 1982	-0-
Fiscal year 1983	-0-
Fiscal year 1984	-0-
Fiscal year 1985	-0-

ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

In accordance with section 308(a)(1)(C) of the Congressional Budget Act of 1974 (Public Law 93-344), the new budget authority and outlays provided by the accompanying resolution for financial assistance to State and local governments are as follows:

New budget authority: $0.

Fiscal year 1981 outlays resulting therefrom: $0.

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96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1264

PROVIDING FOR THE CONSIDERATION OF H.R. 7765

August 28, 1980.—Referred to the House Calendar and ordered to be printed

Mr. Bolling, from the Committee on Rules
submitted the following

REPORT

[To accompany H. Res. 776]

The Committee on Rules, having had under consideration House Resolution 776, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1265

DR. HALLA BROWN

AUGUST 28, 1980.—Committed to the Committee of the Whole House and ordered to be printed

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Mr. DANIELSON, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1578]

The Committee on the Judiciary, to whom was referred the bill (S. 1578), for the relief of Dr. Halla Brown, having considered the same reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Page 1, line 6: Strike "$700,000" and insert "$500,000".

PURPOSE

The purpose of the proposed legislation, as amended, is to direct the Secretary of the Treasury to pay to Dr. Halla Brown the sum of $500,000, less any amount paid to Dr. Brown by the Republic of Panama, in compensation for injuries suffered in an automobile accident involving a diplomat accredited to the Republic of Panama.

STATEMENT

Dr. Halla Brown is a 68-year-old physician who was seriously injured and rendered a quadriplegic as a result of an automobile accident involving an uninsured foreign diplomat.

On April 20, 1974, Dr. Brown was a passenger in a car driven by her husband, Dr. Arthur Rosenbaum, when a second car, driven by Alberto Watson-Fabrega, a diplomat accredited to the Republic of Panama, ran a red light and struck the side of Dr. Rosenbaum's vehicle. Both Drs. Rosenbaum and Brown suffered painful injuries, but Dr. Brown suffered a severe injury to her spine. For the next year and a half, she was confied to a hospital bed. As a result of the accident, Dr. Brown was rendered a quadriplegic and is permanently and totally disabled. At the time of the accident, Dr. Brown was

Professor of Medicine and Chief of Allergy Clinic and Division of Allergy at George Washington University.

Dr. Brown's condition requires 24-hour private duty nursing care by a skilled nurse. Dr. Brown has no movement below her neck; she can move her head but not normally; she experiences severe pain in her neck and shoulders. In addition, Dr. Brown suffers from automatics dysreflexia which causes sudden extreme fluctuations of blood pressure, which, if unattended, could create a life threatening situation. Her respiration is less than normal, causing her to run out of breath after only a few minutes of talking. Finally, she has had to undergo a colostomy further complicating her health care problems.

Dr. Brown's round-the-clock nursing care costs currently are $180 a day or approximately $65,700 a year. Due to inflation, it is anticipated that these costs will increase at a rate of 10 percent per year. In addition, her annual lost earnings are conservatively calculated at $50,000 per year for the first five years and $30,000 per year for an additional five years of practice. Dr. Brown's actual medical expense up to this time have totaled approximately $400,000.

Dr. Brown was prevented from seeking compensation from the negligent driver because as the cultural attaché of the Panamanian Embassy, the driver was accorded immunity from suit. Further, neither the driver nor the Republic of Panama had contracted for insurance which would cover this situation.

In his capacity as an attaché of the Panamanian Embassy, Mr. Watson-Fabrega was fully shielded frum legal liability by the doctrine of diplomatic immunity then in effect in the United States. That law, which was unchanged since 1790, provided absolute immunity from criminal, civil and administrative jurisdiction for all diplomatic personnel, regardless of rank or duties. Also, there was no federal law existing at the time of the accident which would have required diplomatic personnel enjoying immunity to carry liability insurance.

The United States was a signatory of the 1961 Vienna Convention which provided for more restricted diplomatic immunity. However, our diplomatic immunity laws were not modernized until the enactment of the Diplomatic Relations Act of 1978 (Public Law 95–393). The Act (1) repealed the 1790 statute, so that the more limited privileges and immunities of the 1961 Vienna convention are the sole law of the United States; (2) requires foreign diplomats in the United States to carry liability insurance, at a level established by the President, against the risks arising from the operation in the United States of automobiles, vessels or aircraft; and (3) creates as a matter of Federal law, a substantive right of an injured or damaged party to proceed directly against an insurance company where the insured diplomat enjoys immunity from suit. However, this Act does not apply retroactively, and therefore it has no application to Dr. Brown's situation which occurred more than four years prior to the enactment of the Diplomatic Relations Act of 1978.

Given the status of the law at the time of the accident, Dr. Brown's only recourse was to request indemnification from the Republic of Panama. With the help of the Department of State, Dr. Brown received an *ex gratia* payment of $100,000 from the Panamanian government.

This proposed legislation, as amended, would pay to Dr. Brown the sum of $500,000, less any amount paid to her by the Republic of

Panama ($100,000). Thus, this legislation would pay to Dr. Brown a net figure of $400,000. On October 10, 1979, S. 1578 was passed by the Senate awarding Dr. Brown $700,000, less the $100,000 payment by the Panamanian government (a net payment of $600,000).

The committee recognizes that the circumstances regarding Dr. Brown's accident and tragic injuries are exceptional, and it is felt that a recurrence of this situation is unlikely because of the new diplomatic immunity laws discussed above. In view of the unique character of this event, and in view of the fact that the government only recently passed laws to protect its citizens in these types of situations, the committee felt that Dr. Brown was entitled to relief provided by this legislation.

The committee also feels that the sum to be granted to Dr. Brown in the bill as amended is justified based on the evidence submitted to the committee. The gravity and the permanence of the injuries to Dr. Brown as well as her lost earnings as a prominent physician in the District of Columbia were considered by the committee in determining the amount to be awarded to Dr. Brown. Therefore, for the above stated reasons, the committee recommends that S. 1578, as amended, be considered favorably.

[Reports submitted on the House bill providing for the relief of Dr. Halla Brown which is identical to S. 1578 as it was passed by the Senate are as follows:]

U.S. DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL LEGISLATIVE AFFAIRS,
Washington, D.C., July 5, 1979.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Department of Justice would like to present its views on H.R. 3359, 96th Congress, a bill "for the relief of Doctor Halla Brown."

Subsection (a) of the bill would authorize a payment to Dr. Brown of $700,000 for injuries suffered by her as a result of a 1974 automobile accident caused by a Panamanian diplomat in the District of Columbia. Under subsection (b), the amount to be paid out of the Treasury would be reduced by any moneys which Dr. Brown may recover from the Panamanian Government.

The tragic case of Dr. Brown has received wide publicity and has been instrumental in inducing Congress to enact legislation to modernize our antiquated laws governing diplomatic immunity, and to impose upon the diplomatic body a mandatory insurance requirement. Public Law 95-393 was approved by the President on September 20, 1978. This Act:

(1) codifies the privileges and immunities provisions of the Vienna Convention as the sole United States law on the subject;

(2) repeals existing Federal legislation which is inconsistent with the Vienna Convention;

(3) requires foreign diplomats in the United States to carry liability insurance against risks arising from the operation in the United States of automobiles, vessels, or aircraft, at a level to be established by the President; and

(4) creates as a matter of Federal law, a substantive right of an injured or damaged party to proceed directly against the insurance company where the insured diplomat enjoys immunity from suit.

In the hearings leading up to the enactment of Public Law 95–393, Dr. Brown's case was discussed and documented in detail (see "Diplomatic Privileges and Immunities," Hearings and Markup before the Subcommittee on International Operations of the Committee on International Relations, House of Representatives, 95th Cong., 1st Sess., pp. 76–83). Dr. Brown, a physician and professor of medicine at George Washington University, was severely injured as a result of the negligent operation of a car by an uninsured Panamanian diplomat; Dr. Brown has been a paraplegic since 1974. At the time of the accident, and continuing until the present, the laws of the District of Columbia did not require operators of vehicles to take out liability insurance. The diplomat enjoyed immunity from suit in this country, and the Panamanian Government disclaimed responsibility for the damages.

The expenses incurred by Dr. Brown for medical treatments to date have exceeded $200,000; she incurs charges for nursing services at $126 per day (approx. $46,000 per year); her future medical expenses will be substantial; and her economic loss and impaired earning capacity is calculated at $50,000 per year.

Although there is no legal obligation on the part of the United States to compensate Dr. Brown for the damages which she suffered, we believe that her claim deserves the most compassionate consideration, particularly in view of the grave nature of her situation. We must note that it is in part the Federal Government's long inaction in failing to impose a mandatory insurance requirement on foreign diplomats which contributed to Dr. Brown's predicament. Although remedial legislative steps have now been taken with respect to the diplomatic community, such legislation will not benefit Dr. Brown.

This Department has no objection if Congress determines that relief for Dr. Brown is appropriate. We express no opinion on the reasonableness of the $700,000 amount other than to note that, in view of the gravity of Dr. Brown's injuries and her probable incapacity for the rest of her life, the amount is not out of line with judgments rendered by the courts under similar circumstances.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ALAN A. PARKER,
Acting Assistant Attorney General.

DEPARTMENT OF STATE,
Washington, D.C., July 3, 1979.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: The Department of State supports the intent of H.R. 3359, a bill for the relief of Dr. Halla Brown, but cannot address itself to the equity of the amount of funds which the bill proposes to appropriate.

It has been the Department's position over the years that the Federal Government is not liable for the tortious acts of foreign governments or their personnel in this country. Moreover, the Department has consistently opposed approaches which would make the Government an insurer vis-a-vis claims brought by citizens who have been frustrated by the shield of diplomatic immunity.

Nevertheless, Dr. Brown's tragic accident is the most dramatic instance known to us of personal injury suffered by one of our citizens at the hands of a foreign diplomat. The fact that the diplomat was uninsured coupled with his entitlement to immunity resulted in a complete denial of relief from him. This led to efforts by the Department of State to induce his government to make an *ex gratia* payment, based on compassion and not on assumption of legal liability. These efforts were ultimately successful in bringing about a payment of $100,000, which we believe constitutes the most substantial compensation ever extended by a foreign government in a case of this kind. However, the sum appears to be insufficient to defray the heavy expenses of Dr. Brown's long-term care.

Dr. Brown's plight in a unique way served to underscore the lack of recourse available to innocent victims who may sustain personal hardship in certain cases involving diplomatic immunity. The reforms contained in the Diplomatic Relations Act of 1978 which require all foreign mission members to carry automobile liability insurance and which incorporate the "direct action" provision allowing an injured party to sue the insurance carrier directly in those instances where diplomatic immunity may continue to be involved, are in part responses to deficiencies in the justice system that had been dramatized by Dr. Brown's misfortune. Her inability to benefit personally from the legislation for which her tragic case was perhaps the prime motivation must only compound the poignancy of Dr. Brown's predicament. Taking all the exceptional circumstances into consideration the Department of State believes some compensation from the Treasury to be justified on humanitarian grounds.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

J. Brian Atwood,
Acting Assistant Secretary for Congressional Relations.

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96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1266

JEFFERSON COUNTY MENTAL HEALTH CENTER, INC.

August 28, 1980.—Committed to the Committee of the Whole House and ordered to be printed

Mr. Danielson, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R.4033]

The Committee on the Judiciary to whom was referred the bill (H.R. 4033) for the relief of Jefferson County Mental Health Center, Inc., and of certain current and former employees thereof, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert:

That the Secretary of the Treasury or his delegate, upon proof reasonably satisfactory to him that repayment has been made prior to May 14, 1975, to any individual by the Jefferson County Mental Health Center, Incorporated (hereinafter referred to as the "health center"), of a sum representing the amount of taxes imposed on such individual under section 1301 of the Internal Revenue Code of 1954 (relating to rate of tax) and deducted and paid by the health center under section 3102 of such Code (relating to deduction of tax from wages) for any period beginning after December 31, 1971, and prior to May 14, 1975, shall consider such sum so repaid to such individual as an overpayment of tax under section 6413(b) of such Code (relating to overpayment of certain employment taxes) and shall approve a claim for a refund, credit, or adjustment for such overpayment filed by the health center prior to, or within ninety days after, the date of enactment of this Act, under section 6402 of such Code (relating to authority to make credits or refunds) or 6611(a) or (b)(2) of such Code (relating to interest on overpayments).

Sec. 2. Any period of limitations for filing a claim for credit or refund under section 6511 of such Code (relating to limitations on credit or refund) shall be waived with respect to any claim for refund, credit, or adjustment made by the health center in accordance with section 1 of this Act. Section 6514 of such Code (relating to credits or refunds after a period of limitation) shall not apply to any such claim.

Sec. 3. Nothing in this Act shall be construed to relieve the health center of any liability for the payment of taxes imposed by section 3111 of such Code with respect to any wages paid by it to any individual for any period.

Sec. 4. Upon payment of a claim authorized by Section 1 of this Act, the United States shall be subrogated to all rights of the health center against the

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individuals referred to in that section who were repaid amounts representing the amount of taxes imposed on such individuals under section 1301 of the Internal Revenue Code of 1954 and deducted and paid by the health center under section 3102 of such code for any period beginning after December 31, 1971 and prior to May 14, 1975.

PURPOSE

H.R. 4033 would authorize the filing and consideration of a claim by the Jefferson County Mental Health Center for a refund of the amount paid to its employees as refunds of individual social security contributions after the Internal Revenue Service had erroneously advised the Center that the money had been incorrectly withheld since the Center had not filed a certificate of waiver waiving the tax-exempt organization exemption from social security coverage. The Center had in fact filed such a certificate. Accordingly, their employees were entitled to social security coverage and the Center's claims for refund could not be allowed.

STATEMENT

The Departments of Treasury and Health Education and Welfare have indicated in their reports to the Committee on the bill that they would have no objection to the bill as amended by the Committee.

The Jefferson County Mental Health Center is located in Lakewood, Colorado, the center provides mental health services for a tricounty area. The center has suffered a series of administrative misunderstandings with the Internal Revenue Service that can only be remedied through legislation.

The problem developed over the payment of social security taxes by the center. The Jefferson County Mental Health Center, a non-profit organization, is exempt from employee participation in the social security program. However, employees at the center elected to participate in the program.

Proper forms were filed with the IRS and FICA taxes were deducted and paid beginning in 1963. However, in the course of an IRS review of the center, it was determined by the IRS that the proper form for employee withholding had not been filed.

The IRS informed the center that because of a lack of the proper forms, the center had been wrongfully withholding the FICA tax. The IRS told the center to reimburse the employees for FICA taxes withheld and that the IRS would reimburse the center.

The Jefferson County Mental Health Center reimbursed 133 employees for a total of $74,128. Shortly thereafter, the IRS informed the center that proper forms had been originally filed and had then been located. Consequently, the IRS said it would not reimburse the center for money it had already returned to employees.

By this time, it was too late to get money back from the employees, who had spent the money or were no longer employed by the center.

The IRS cannot remedy this mistake because it does not have the authority to expend funds without a legal obligation to do so or a statutory authorization. H.R. 4033 provides that the Secretary of the Treasury determine the amounts withheld and treat these amounts as tax overpayments which are then reimbursed to the center.

The amended bill provides that, as to those individuals with respect to whom a repayment was made, the payment is to be considered as an overpayment of the tax when repayment by the Center to an individual was before May 14, 1975, and was of a sum representing the amount of taxes imposed on such individual under section 3101 and deducted and paid by the Center under section 3102 for any period beginning after December 31, 1971, and before May 14, 1975. The bill would require the IRS to approve a claim for credit, refund, or adjustment in an amount representing the amount of the repayment considered as an overpayment of tax under the bill upon proof reasonably satisfactory to the Secretary of the Treasury or his delegate that repayment was made by the Center before May 14, 1975.

In order to effect this result, the amended bill provides that the statutory period of limitations for filing claims or granting refunds or credits shall not apply to a claim filed as provided therein.

Under the amended bill, nothing therein shall be construed to relieve the Center of any liability for the payment of the employer's portion of tax with respect to any wages paid by it to any individual for any period.

As has been noted, in its report to the committee on the bill the Treasury Department stated that in view of the Center's equitable basis for relief on the facts, the Department did not oppose the enactment of H.R. 4033.

The amended bill further provides that upon the payment of a claim as provided for in the amended bill, the United States is to be subrogated to all rights of the Health Center against the individuals referred to in the bill who were refunded amounts withheld from them as provided for therein.

In indicating it was not opposed to relief the Treasury Department stated:

> In summary, the Treasury Department is not opposed to legislative relief for the Center, with certain amendments. However, since the determination of an individual's benefits under the Social Security Act is within the jurisdiction of the Department of Health, Education, and Welfare, the Treasury Department expresses no opinion with respect to those provisions of the bill that concern an individual's benefits under the Social Security Act.

As to the Department of Health, Education, and Welfare position referred to in the above Treasury statement, the Department of Health, Education, and Welfare stated that it would oppose enactment of the bill in its original form and would urge that changes be made in the bill in order to assure that employees of the Jefferson County Mental Health Center (a nonprofit organization) retain credit for the social security coverage previously established. The committee amendment incorporates this suggestion. The Department pointed out that the services performed by the employees were covered and should not be removed from coverage because of erroneous information given by a Government agency.

As has been indicated above, the committee agrees with the positions of both the Department of the Treasury and of Health, Education, and Welfare and has incorporated them in the committee amendment. The committee concluded that the facts and equities of this case merit legislative relief as provided for in the amended bill and recommends that the amended bill be considered favorably.

Department of the Treasury,
Washington, D.C., June 10, 1980.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of the Treasury Department on H.R. 4033 (96th Congress) entitled "A Bill for the relief of the Jefferson County Mental Health Center, Incorporated, and of certain current and former employees thereof."

In general, employees of tax-exempt organizations described in section 501(c)(3) of the Internal Revenue Code are not covered under the social security program. A section 501(c)(3) organization and its employees obtain this coverage by filing Form SS-15, Certificate Waiving Exemption From Taxes Under the Federal Insurance Contributions Act together with Form SS-15a, containing the names, if any, of employees who concur in the filing. Individuals who are employees at the time Form SS-15 is filed have an option of electing coverage by signing the Form SS-15a or by signing a Form SS-15a Supplement within 24 months of the date the Form SS-15 is filed. Individuals who are hired after the quarter in which the Form SS-15 is filed are automatically covered.

Once the waiver is effective it remains effective for all future years, unless a request for termination is made. Such a request may not be made unless the certificate has been in effect for at least eight years. Then the election may be terminated with two years advance notice.

If an election waiving exemption has not been made by a section 501(c)(3) organization, its employees are not legally entitled to social security coverage, even though they may have made contributions, and these organizations and their employees could be barred from recovering such amounts by the statutory periods of limitation. In an effort to prevent this inequity, officials in the IRS Western Region developed a program to determine if exempt organizations of record were liable for social security taxes.

In response to the request for clarification of its status, the Jefferson County Mental Health Center (hereinafter the Center) submitted information indicating it was classified as a section 501(c)(3) organization and that it had not filed Forms SS-15 and SS-15a electing coverage. The IRS relied on this information without checking its records and advised the Center that it was not liable for social security taxes. The IRS invited the Center either to elect coverage or claim a refund of taxes paid in error.

In handling an inquiry from an employee of the Center it was discovered that the Center had filed a Form SS-15 effective January 1, 1963. The Center was notified by telephone on May 14, 1975, that the valid Form SS-15 had been found, that the election was still in force, and that it should discontinue making refunds to its employees.

On October 29, 1975, the Center filed three claims for refund aggregating $148,257.18, representing both the employer and employee portion of taxes for 1972, 1973, and 1974. Allowance of the claims is precluded by the Center's earlier waiver of its exempt status and the statutory limitations on the termination of that waiver.

If enacted, H.R. 4033 would cause the waiver certificate filed by the Center to be deemed not effective in the case of those individuals with respect to whom a repayment was made which is considered, under section 2, as an overpayment of tax. Section 2 considers a repayment to be an overpayment of tax if it is established that the repayment by the Center to an individual was before May 14, 1975, and was of a sum representing the amount of taxes imposed on such individual under section 3101 and deducted and paid by the Center under section 3102 for any period beginning after December 31, 1971, and before May 14, 1975. The bill would require the IRS to approve a claim for credit, refund, or adjustment in an amount representing the amount of the repayment considered as an overpayment of tax under the bill upon proof reasonably satisfactory to the Secretary of the Treasury or his delegate that repayment was made by the Center before May 14, 1975.

Section 3 provides that the statutory period of limitations for filing claims or granting refunds or credits shall not apply.

Section 4 provides that the certificate of waiver shall apply to any individual to whom repayment considered an overpayment of tax under section 2 was made, for any period after the period described in the bill for which the certificate of waiver is not effective with respect to that individual. This section also provides that, notwithstanding the provisions of section 3121(k)(1)(B)(iii) the Center may not elect to have such certificate of waiver apply to any individual during the period the certificate of waiver is deemed not effective for such individual.

Subsection (a) of section 5 provides that wages to which the repayments considered as overpayments of tax are attributable are deemed not to constitute wages for purposes of determining benefits under titles II and XVIII of the Social Security Act unless (1) the individual receiving the wages, on or before the date of enactment of the bill, has died or attained age sixty-two or, on such date, is under a disability (as defined in section 216(i) of the Social Security Act) which began prior to such date, or (2) the individual enters into a arrangement with the Secretary of the Treasury or his delegate for paying into the Treasury an amount equal to the sum repaid to him (as described in section 2) by the Center. Section 5 further provides that the Secretary of the Treasury or his delegate shall issue regulations prescribing the manner in which the arrangement for payment by the individual shall be made, and that the Secretary of the Treasury and the Secretary of Health, Education, and Welfare shall cooperate in assuring that each individual who is eligible to enter into an arrangement will be notified of that fact and given an adequate opportunity to enter into such an arrangement.

Section 6 provides that nothing in the bill shall be construed to relieve the Center of any liability for the payment of the employer's portion of tax with respect to any wages paid by it to any individual for any period.

In view of the Center's equitable basis for relief on the facts, the Treasury Department does not oppose the enactment of H.R. 4033, provided certain minor revisions are made in the Act.

First, Section 4 waives the statute of limitations for claims under this bill. While this is necessary since such claims presently are barred by the statute, it is appropriate to limit such claims to a specified period after enactment, such as one year. This would permit the IRS to close this matter at a definite time.

Second, subsection (c)(1) of section 5 provides that subsection (a) is not applicable with respect to an individual who enters into an arrangement with the Secretary of Treasury or his delegate for paying into the Treasury an amount equal to the sum repaid to the individual by the Center. As drafted, subsection (c)(1) would not provide for the inapplicability of subsection (a) with respect to any other person (such as a spouse) claiming any benefits under the Social Security Act on the basis of wages of an individual even if that individual enters into such an arrangement with the Secretary of the Treasury or his delegate. Nor does subsection (c)(1) explicitly require any amount to actually be paid into the Treasury before the provisions of subsection (a) become applicable. To remedy these problems, subsection (c)(1) should be revised to provide that subsection (a) will not be applicable to wages with respect to which an amount equal to the taxes repaid to the individual is paid into the Treasury by the individual who received the wages, in accordance with an arrangement entered into between such individual and the Secretary of the Treasury or his delegate.

Third, subsection (c)(2) of section 5 would require the Secretary of the Treasury or his delegate to prescribe by regulations the manner in which an arrangement for payment shall be made. The Treasury Department believes that the rulemaking procedure should not be employed to deal with a relatively small group of employees of a single employer, and subsection (c)(2) should simply require the Secretary of the Treasury or his delegate to prescribe the manner an arrangement for payment shall be made.

In summary, the Treasury Department is not opposed to legislative relief for the Center, with certain amendments. However, since the determination of an individual's benefits under the Social Security Act is within the jurisdiction of the Department of Health, Education, and Welfare, the Treasury Department expresses no opinion with respect to those provisions of the bill that concern an individual's benefits under the Social Security Act.

The Office of Management and Budget has advised the Treasury Department that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary (Tax Policy).

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., December 10, 1979.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for a report on H.R. 4033, a bill "For the relief of the Jefferson County Mental Health Center, Incorporated, and of certain current and former employees thereof".

In summary, we would oppose enactment of the bill in its present form and would urge that changes be made in the bill in order to assure that employees of the Jefferson County Mental Health Center (a nonprofit organization) retain credit for the social security coverage previously established. The services performed by the employees were covered and should not be removed from coverage because of erroneous information given by a Government agency. We defer to the Department of the Treasury on the issue of whether the Center should be reimbursed for the social security taxes it refunded to employees after incorrect advice from the Internal Revenue Service (IRS).

The bill would direct the Secretary of the Treasury to reimburse to the Jefferson County Mental Health Center the amount of the social security employee taxes paid for services performed during the period from January 1, 1972, through May 13, 1975, which the Center refunded to its employees upon the advice of the IRS. The taxes plus interest would be reimbursed to the Center without regard to time limits in the Internal Revenue Code within which such a refund must generally be made. If an employee performed services during the refund period and the Center reimbursed him for his social security employee taxes, his wages for that period would be treated as not covered under social security unless he made arrangements to pay the social security employee taxes or died, became disabled, or reached age 62 on or before enactment.

Under social security law, in order for employees of a nonprofit organization to be covered under social security, the organization must file a waiver certificate with the IRS. The organization can elect up to 4 years of retroactive coverage. Current and former employees affected can choose whether they want coverage; future employees are covered mandatorily.

The Jefferson County Mental Health Center filed a certificate waiving its exemption from the social security tax and social security coverage of its employees began in 1963. In February 1975, IRS, in the belief that no waiver certificate had been filed, notified the Center that its employees were not covered under social security. IRS advised the Center that it could file a waiver certificate and give employees the choice of coverage. IRS also stated that if some employees chose not to be covered under social security the social security employer-employee taxes paid on their wages during the preceding 3-year period (which was not barred to correction by the social security statute of limitations) could be reimbursed to the Center provided that the Center first refunded the employees' share of the taxes to the employees involved. The Center refunded $74,128 to 103 of its employees (who had chosen not to be covered under the second waiver certificate). Then, on May 14, 1975, IRS notified the Center that a waiver certificate had previously been filed by the Center in 1963; therefore, the Center's employees were covered under social security and IRS could not refund any social security employer or employee taxes to the Center.

We defer to the Department of the Treasury on the issue of whether the center should be reimbursed for the money it erroneously refunded to its employees. However, we suggest amending the provisions of the bill that would grant social security credits to some employees only if the taxes due were paid and would grant credits to other employees even though the taxes had not been paid. We believe the bill should be modified so that all of the affected employees would receive full credit under social security for wages paid during the periods in question. The good faith action by the Center in relying on the erroneous information should not deprive employees of social security protection.

We therefore recommend that the bill not be favorably considered unless the changes discussed above are made.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

PATRICIA ROBERTS HARRIS.

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1267

JAMES R. THORNWELL

AUGUST 28, 1980.—Committed to the Committee of the Whole House and ordered to be printed

Mr. HARRIS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5063]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5063) for the relief of James R. Thornwell, having considered the same, report favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 1, line 5: Strike "$1,700,000 to" and insert "$250,000 to the trustee designated pursuant to section 2 of this Act for the benefit of".

Page 2, line 14: After "United States," insert "including those asserted in the United States District Court for the District of Columbia in Civil Action Number 78-1845."

Page 2, line 17: After "forces", strike ", and such payment shall be in lieu of any further compensation or award for such injuries" and insert: "Further James R. Thornwell shall not be eligible for any compensation or benefits from the Veterans Administration or the Department of Defense."

Page 2, after line 18, insert:

> SEC. 2. The sum to be paid pursuant to this bill shall be paid to a California bank as trustee, under a trust agreement to be entered into by said bank and James R. Thornwell (and to be approved as to form by a representative of the Department of Justice of the United States). The trust agreement shall provide that the Trustee shall initially pay James R. Thornwell's outstanding debts and obligations, including legal fees and reimbursable expenses in connection with legal services (as limited by section 3 of this Act), shall invest the remaining amounts and hold them in trust, shall during the lifetime of James R. Thornwell pay to him all of the net income of the trust on a monthly basis, and also pay

or apply such amounts of the principal as the Trustee deems necessary for the health, welfare, comfort and maintenance of James R. Thornwell, and upon his death shall pay all assets then held in trust to his estate.

Page 2, line 19: After "Sec", strike "2" and insert "3".

PURPOSE

H.R. 5063, as amended, would provide for payment to a trustee for the benefit of the claimant of $250,000 in full satisfaction of all claims against the United States for the Army's surreptitious administration of LSD in June 1961; the Army's subsequent failure to advise the claimant that he had been given LSD; and its failure to provide him with appropriate medical care for conditions resulting from the claimants reaction to the administration of LSD.

STATEMENT

Upon graduation from high school, James Thornwell was awarded a college scholarship as the most promising black male student. He completed one and a half years of college and then joined the United States Army.

On March 14, 1961, at the age of twenty-three, he was accused of having stolen confidential military records while serving in France as an Army private. Thornwell claims he was subjected to intensive interrogation and, beginning on May 1, 1961, that he was placed in "protective custody", during which time he was in solitary confinement in a small chamber with covered windows and deprived of food, drink, sleep and the use of toilet facilities. His isolation was broken only by periods of interrogation regarding the missing documents. During these interrogations, Thornwell was beaten, threatened, verbally degraded, injected with sodium pentathol, and hypnotized by Army agents. These techniques of sensory deprivation are experimentally known to cause extreme forms of mental illness.

The six weeks of intensive interrogation climaxed on June 8, 1961. Mr. Thornwell, who was handcuffed and blindfolded, was led to believe that he was being kidnaped at gunpoint by the French police and that his life was in serious danger. He was then "rescued" by the American agents and taken to an isolated old mill where, unknown to himself, he was given LSD. According to the report of the Army team conducting the LSD experiment, Thornwell, who was already disoriented and weakened by the preceding week of stress, had an extreme paranoic reaction. While subject to LSD, Thornwell was again interrogated by harsh methods, including threats to extend his drug-induced state to a permanent condition of insanity.

After the interrogation was completed, Army Intelligence agents concluded that Mr. Thornwell's confession that he had taken the documents and thrown them in the Loire River was true. Court martial charges were preferred against him but were later dropped due in large part to concern that the conditions of his interrogation would be revealed. On October 23, 1961 Mr. Thornwell, who was not told that he had been given LSD, was administratively separated from the Army on grounds of unsuitability. He received a General

Discharge Under Honorable Conditions. Mr. Thornwell now claims that confessions he signed during his interrogation are not true and that they were signed under duress.

After his discharge, Mr. Thornwell had great difficulty returning to a normal life. He did not resume his college studies, although his scholarship funds were still available, and he was unable to stick with a job. Psychological examinations reveal that he has suffered almost constant headaches, continual states of anxiety and paranoia, and periods of intense withdrawal.

In 1975, as a result of Senate hearings on intelligence activities, Mr. Thornwell was identified as a person who had been given LSD by the Army. As part of the notification program to those who had been consenting participants in drug experiments, he was contacted for follow-up studies. Mr. Thornwell was puzzled by the notice since he had not knowingly participated in medical experiments, so an attorney acting on his behalf made a detailed request for information pursuant to the Freedom of Information Act. In October, 1977, through the response to this request, Mr. Thornwell learned for the first time that he had been given LSD and that his recollections of the events of March–June 1961 had a basis in fact.

Mr. Thornwell sued for damages against the United States under the Federal Tort Claims Act. On May 30, 1979, the District Court ruled that the *Feres* doctrine barred any recovery for the events that transpired in France in May and June 1961, since Mr. Thornwell was on active duty in the military at that time. The court did hold that Mr. Thornwell could pursue an action for damages arising from the Army's failure, subsequent to his discharge, to notify him of the LSD episode and to provide appropriate treatment. Presently any further court action has been stayed since both Mr. Thornwell and the Government have concluded that private legislation provides the only means to a fair settlement of this matter.

This bill provides that Mr. Thornwell's acceptance of any legislative relief shall constitute a waiver of all claims against the United States.

After considering the facts of Mr. Thornwell's case, the committee recommends that the bill, as amended, be considered favorably.

DEPARTMENT OF THE ARMY,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., September 28, 1979.

Hon. PETER W. RODINO, Jr.
Chairman Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: You have requested the views of the Department of the Army on H.R. 5063, 96th Congress, a bill for the Relief of James R. Thornwell.

H.R. 5063 authorizes and directs payment to Mr. Thornwell of $1,700,000. This amount would compensate him for the Army's surreptitious administration of LSD in June 1961 and the Army's subsequent failure to advise him that he had been given LSD and to provide appropriate care. The Department of the Army, on behalf of the Department of Defense, strongly supports enactment of this legislation.

BACKGROUND SUMMARY

The following summary provides information derived from Army documents concerning Mr. Thornwell, his inclusion in the covert Army drug testing program, and his subsequent treatment by the Army.

A. LSD Field Testing: Operation Third Chance [1]

In the mid-1950's, the Army Chemical Corps undertook a program to study possible military applications of LSD. In 1958, the Chemical Corps, in conjunction with Army Intelligence, initiated laboratory tests designed to study the efficacy of LSD as an intelligence interrogation aid. The results of this effort were considered promising, but it was believed that additional field testing was needed. More than two years after this field testing was first proposed, the Assistant Chief of Staff for Intelligence approved the initiation of Operation Third Chance, an operational field test of LSD. The operation was to be conducted in Europe by a Department of the Army "Special Purpose Team," which was composed of an intelligence officer (the Team leader), a medical officer, and an officer from the Chemical Corps. As approved, the field testing program was to be limited to "non-US subjects."

On April 28, 1961, the Special Purpose Team departed for Europe to undertake the operation.

B. James Thornwell—Events Prior to Administration of LSD

In March, 1961, Mr. Thornwell, an Army Private, was assigned to the Staff Message Center, Headquarters, United States Army Communications Zone, Europe, in Orleans, France. In that position, he had access to numerous classified documents, some of which contained "restricted data."

On March 16, 1961, 166 classified messages were discovered missing from the Message Center. The missing documents included sensitive information concerning the specific location of nuclear weapons in Europe and future shipments of nuclear weapons to Europe. An immediate investigation was initiated by the local command. During the first several days of the investigation, all personnel assigned to the Message Center were interviewed and subjected to polygraph examinations. Almost immediately, Mr. Thornwell became a principal suspect.

A vigorous investigation continued through April. In late March, 1961, a number of the missing documents were recovered on the bank of the Loire River, ten miles downstream from Orleans. During several interrogations in mid-April, prior to being taken into custody, Mr. Thornwell, under conditions that may have been coercive, executed written statements wherein he admitted taking the documents, but asserted that he simply disposed of them in the Loire River. Although the counterintelligence agents who were conducting the investigation believed that Mr. Thornwell took the documents, they were skeptical about his account of the disposal. They apparently believed that, rather than acting on impulse as he asserted, Mr. Thornwell might have been engaged in espionage and thus turned the documents or copies over to a foreign power. Accordingly, they continued to press forward with their investigation.

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[1] The Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities (the "Church committee") addressed the Army's LSD testing program in some depth in the Final Report issued in April, 1976. S. Rep. No. 94-755, 94th Cong., 2d. Sess., Book I, 411-420 (1976). That report provides substantial detail concerning the initiation of the testing program, including the reasons that such a program was believed necessary.

On May 2, 1961, Mr. Thornwell executed a statement in which he purportedly made a "voluntary" request to be placed in "protective custody." Mr. Thornwell now contends that the confinement was involuntary. Based upon our consideration of the totality of the circumstances, we believe that Mr. Thornwell's contention is probably accurate.

The Army records provide very little information concerning the events that transpired while Mr. Thornwell was in protective custody or the conditions of the custody. Mr. Thornwell asserts that during this period he was "continuously brutalized by agents of the Army Counterintelligence Corps . . . solitarily confined in a small chamber with covered windows and deprived of food, drink, sleep, and the use of toilet facilities . . . and beaten, threatened, verbally degraded, injected with sodium pentothal and hypnotized by Army agents." Briefing Paper on Private Legislation for James R. Thornwell, 125 Cong. Rec. S. 11189 (daily ed. Aug. 1, 1979). The available records clearly show that Mr. Thornwell was interrogated while hypnotized and while under the influence of sodium pentothal.[2] The records however, do not contain information sufficient either to support or "rebut his other serious assertions concerning his treatment while in protective custody."

C. James Thornwell—The Decision to Administer LSD

The available records do not make clear how the decision to use the Operation Third Chance Special Purpose Team to interrogate Mr. Thornwell was made or who made that decision. Although it is clear that the decision was made in Europe, the official who made that decision is not identified.

The decision apparently was made without consultation with the responsible officials in the Office of the Assistant Chief of Staff for Intelligence (OACSI), Department of the Army, in Washington, D.C. This latter conclusion is noteworthy because of the general understanding within OACSI and by the Team leader that the field test program would not involve United States subjects.

In fact, it appears that OACSI officials were not even aware of the plans to use the Special Purpose Team until some time on June 7 or 8. (The available documents suggest that the decision to use the Team had been made by June 5.) On June 7, Army officials in Europe sent a message to OACSI advising them of the plan to interrogate Mr. Thornwell with LSD. That message was given a rather low precedence and it is not clear exactly when it was received by OACSI. In any event, on the afternoon of June 8, OACSI responded to Europe, requesting additional information about the decision. Two hours later, a second message was sent to Europe which stated:

> Purpose of Special Purpose Team EA 1729 [LSD] is to conduct field experimentation using non-US subjects only. US citizens will not repeat not be subject to EA 1729 [LSD].

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[2] These episodes occurred on May 26 and 27, respectively. In both cases, the available documents state that Mr. Thornwell consented "voluntarily and without duress, coercion, unlawful indorsement, or promise of reward or clemency or immunity." Even assuming the accuracy of that statement, however, we do not believe that the coercive effect caused by the totality of the circumstances can be ignored.

This message unfortunately was not dispatched until 6:20 PM, Washington time, almost two hours after the interrogation of Mr. Thornwell had begun.

In summary, Mr. Thornwell's interrogation with LSD was in contravention of the general understanding that existed when Operation Third Chance was approved and was undertaken without consultation with the Army officials responsible for Operation Third Chance. Moreover, it appears rather clear that had such consultation taken place sufficiently before the interrogation, the entire incident would never have arisen.

D. James Thornwell—The LSD Interrogation [3]

The actual interrogation began shortly after 10 PM on June 8.[4] However, there were several significant steps prior to the actual interrogation. First, the conditions of Mr. Thornwell's "protective custody" were "toughened up." Several days before the interrogation was to take place, the Intelligence agents restricted his diet to field combat rations. On both June 7 and 8, he was allowed very little, if any sleep. He was subjected to extended periods of intensified conventional interrogation. He was fed "thirst producing solids" at the same time that his consumption of liquids was reduced.

Second, a carefully constructed drama was enacted to make Mr. Thornwell, who was handcuffed and blindfolded at the time, believe that he was being kidnapped at gunpoint by the French police and that his life was in serious danger. This entire scenario transpired in the darkness, cold, and rain along a lonely country road in France. Mr. Thornwell was then "rescued" by the American agents and taken to the isolated old mill where the LSD interrogation took place. The purpose of this entire ruse was to ensure that Mr. Thornwell was under substantial mental stress when he first received the LSD.

The LSD was administered surreptitiously in a glass of water that was provided to Mr. Thornwell. At that point in time, the members of the Special Purpose Team took over the interrogation. The interrogation extended for almost six hours, until after 4 AM on June 9. Mr. Thornwell had a very severe reaction to the LSD, the most severe observed by the Team members during Operation Third Chance. The normal "peak effect" observed by the Team members lasted between 45 and 90 minutes; Mr. Thornwell, however, remained at a "peak" for approximately four hours. During this extended period, it was not possible for Mr. Thornwell to sit without support; he could not keep his head from dropping to the table at which he sat; and he could not speak above a whisper. In addition, his flow of saliva and nasal drippings was uncontrollable. He would experience involuntary trembling of his hands and felt obvious muscular discomfort. At one point in the interrogation, he grabbed his chest as if he were in pain. During the interrogation, the interrogators suggested that Mr. Thornwell's acts might be responsible for the eventual death of his mother—she was ill at the time. At this suggestion, Mr. Thornwell leaped from his chair and threw himself, face down, onto the floor, sustaining a bruise on his forehead. He remained there for a period, moaning, until he was ridiculed into getting up.

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[3] This entire account of the LSD experience is taken from evidence available to the Department of the Army.

[4] At least some of the documents state that the interrogation took place on June 7. However, the better evidence indicates that it took place on June 8.

Later in the interrogation, the members of the Team told Mr. Thornwell that he was losing his mind, that they had caused that state, and that they would make the state permanent and have him committed to an asylum unless he cooperated with them. The Team members observed that Mr. Thornwell was convinced of the truth of this threat and that, when the Team relented and agreed to give him the "antidote," Mr. Thornwell stuttered in a voice broken by emotion, threw himself on his knees, cradled his head and wept copiously for some time.

E. James Thornwell: Aftermath of the LSD Interrogation

The records do not indicate that Mr. Thornwell was provided any special medical treatment after the interrogation. Within a short time thereafter, the Army Intelligence agents concluded that Mr. Thornwell's assertion that he had taken the missing documents and simply disposed of them was probably accurate and he was released from protective custody.

Court Martial charges were preferred against Mr. Thornwell and, pursuant to Article 32 of the Uniform Code of Military Justice 10 U.S.C. § 832, a pretrial investigation was undertaken. During the investigation it became apparent that, although he did not know the specifics, Mr. Thornwell was very aware that something quite unusual has transpired at the old mill on the evening of June 8. Intelligence agents who were questioned about that matter during the investigation, however, refused to provide any information, citing operational considerations.

The General Court-Martial Convening Authority ultimately decided not to refer the case to trial. Although a number of reasons were advanced for this decision, the predominant one appeared to be that:

> the employment of the Department of the Army Team and its bizarre methods could not be kept out of a trial by court-martial. Specific orders had been received that . . . the existence and activities of this Department of the Army team were, under no circumstances, to be revealed to any person outside the Department of the Army.

Accordingly, the Commander decided to eliminate Mr. Thornwell administratively from the Army on grounds of unsuitability.

Mr. Thornwell was separated on October 23, 1961 with a General Discharge Under Honorable Conditions. Available records do not contain any indication that prior to this discharge, the Army informed Mr. Thornwell that he had been given LSD or provided any treatment for psychological problems that might have resulted from that episode.

F. James Thornwell: Post-Discharge Actions

On at least two occasions after his discharge, officials within the Office of the Assistant Chief of Staff for Intelligence reviewed records pertaining to Mr. Thornwell and the LSD episode.

The first instance was in December 1961-February 1962 when serious questions were raised within the Department of Defense and by the Congressional Joint Committee on Atomic Energy concerning the decision not to prosecute Mr. Thornwell. The responses provided by the Office of the Assistant Chief of Staff were very vague, generally focusing on various legal evidentiary problems associated with the case, not the LSD episode. Indeed, the only references to the LSD episode were so vague that no one who did not have independent knowledge of the LSD testing program could reasonably have been expected to know that Mr. Thornwell had been subjected to such interrogation. The only reference to "drugs" occurred in a context that would make the uninitiated reader assume that sodium pentothal was the substance in question. This step, coupled with the fact that the Office of the Assistant Chief of Staff for Intelligence had generally restricted information concerning the LSD program to a very few intelligence officials, made it most unlikely that non-intelligence officials would become aware of Mr. Thornwell's plight and, perhaps, take steps to remedy the situation.

The second instance was in 1964–65 when the Federal Bureau of Investigation raised a question concerning Mr. Thornwell. The Office of the Assistant Chief of Staff for Intelligence prepared a response based upon a review of records concerning Mr. Thornwell. At about the same time, the Office of the Assistant Chief of Staff for Intelligence, as a separate matter, conducted a review of the overall LSD operational testing program. Still no effort was made to locate Mr. Thornwell and examine him.

After this period, the entire matter apparently remained dormant until 1975 when the Church committee conducted its hearings. At that time, the details of Operation Third Chance and the LSD program again surfaced. The only reference to Mr. Thornwell was a mention of a "Private J.R.T." After some investigation by the Army, however, "Private J.R.T." was identified as James Thornwell. His name was added to the list of individuals to be contacted by the Office of The Surgeon General as part of a follow-up program undertaken by the Army to study the participants in the LSD testing program.[5]

The notice sent Mr. Thornwell in April, 1976 was very general and simply referred to his participation in a research program conducted at Edgewood Arsenal. There was no mention of either the ordeal at Orleans or LSD. An attorney representing Mr. Thornwell subsequently made a detailed request pursuant to the Freedom of Information Act for information concerning the program. In response to that request, the Army for the first time provided Mr. Thornwell with specific information concerning his inclusion in the Operation Third Chance Program in 1961; this occurred in October, 1977.

Since October 1977, Mr. Thornwell has received attention at the highest levels of the Departments of the Army, Defense and Justice. In an unusual step, I undertook to meet personally with the various counsel for Mr. Thornwell. Although those meetings and discussions continued for over a year, no resolution of the matter resulted.

In my view, our negotiations failed to result in a settlement because neither the Executive nor the Judicial Branch can compensate Mr. Thornwell under the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680. More specifically, most of the events for which Mr. Thornwell seeks recovery were incident to his military service, and it is well established that the United States is immune from tort claims by individuals for injuries incident to their military service. *See Feres* v. *United States*, 340 U.S. 135 (1950).

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[5] In 1976–77, the Office of The Surgeon General attempted to contact all individuals who had participated in the various LSD testing programs. Medical examinations were provided to those who desired them.

In fact, on May 30, 1979, United States District Court Judge Charles Richey expressly ruled that Mr. Thornwell is barred from seeking recovery from the United States or its officials, past or present, for the events that transpired in Orleans, France in May and June, 1961.

Judge Richey did hold that Mr. Thornwell could pursue an action for damages arising from the Army's failure, subsequent to his discharge from the Army, to notify him of the LSD episode and to provide appropriate treatment. Both sides fully agree, however, that extended litigation is not in the best interest of Mr. Thornwell, the United States government, or the individuals who are defendants in the litigation. The bill provides of course that Mr. Thornwell's acceptance of any legislative relief shall constitute a waiver of all claims against the United States and its officers and employees, past or present.

DISCUSSION

The documentary accounts of the actual LSD interrogation portray a grueling experience, one that no citizen of this country should be subjected to at the hands of his government. This nation, more than almost any other nation in history, demands respect and protection for the dignity of each and every individual. This guiding principle, articulated perhaps most clearly in our Bill of Rights, results in a judicial system that ensures an individual numerous protections before he can be found guilty and subjected to punishment. Even then, the punishment cannot be cruel and unusual, but must meet certain standards of acceptability.

In June 1961, the United States, through the Army's treatment of Mr. Thornwell, departed from these guiding principles. The fact that Mr. Thornwell was the suspect in an investigation into the disappearance of classified documents does not affect our judgment in this matter. Mr. Thornwell's attorneys assert that the Army never produced any credible evidence that he was involved in the disappearance. Although we do not agree with this assertion, we do not even believe that this issue is relevant to consideration of the legislation. Even if the case against Mr. Thornwell was perfect, that in no way justified the Army's utilization of LSD under the circumstances involved.

This judgment does not represent mere application of today's standards to yesterday's events. The most vivid indication that, even in 1961, this conduct was not acceptable is the June 8, 1961 message from the Office of the Assistant Chief of Staff for Intelligence (OACSI) that emphatically directed that Mr. Thornwell not be given LSD. This response is particularly interesting when one considers that OACSI not only had full responsibility for the LSD field testing program, but for the investigation into the missing documents as well. In the minds of the Army officials with ultimate responsibility for resolving the security investigation, the fact that Mr. Thornwell might have been a suspect did not, even in 1961, justify utilization of LSD.

Equally compelling is the fact that before the Special Purpose Team undertook Operation Derby Hat, the successor to Operation Third Chance, OACSI issued an explicit order prohibiting the administration of LSD to American citizens as part of the Operation. The stated purpose of this order was to avoid repetition of the episode involving Mr. Thornwell.[6]

Finally, we are aware that the legislation would provide Mr. Thornwell a large amount of money. However, we do not believe the amount to be excessive. We think that a critical element that must underlie any consideration of amount is the unconscionable nature of the Army's actions in 1961. A person's mind, perhaps more than any other part of him, governs his ability to function, and to obtain peace and satisfaction. The mind distinguishes humans, as a group, from other life, and individuals from each other. In essence, the mind plays perhaps the most significant role in making him what he is.

The Army administered to Mr. Thornwell a chemical substance that was intentionally calculated to affect the ability of the mind to function. Indeed, the various circumstances surrounding that administration were carefully structured to ensure that the LSD had the maximum effect on Mr. Thornwell's mind. The graphic description of the interrogation set forth above makes it clear that this objective was achieved. The reports of the various doctors who have examined Mr. Thornwell, including one chosen by the Army, makes it very clear that this episode has had a lasting impact on Mr. Thornwell's very existence since 1961. Under these circumstances, we do not believe that the amount sought is unreasonable.

CONCLUSION

The present legislation, if enacted, would constitute a public statement by the United States of the responsibility for and disapproval of Mr. Thornwell's treatment. The relief would represent an attempt not only to compensate Mr. Thornwell for his physical injuries, but to return to him something that his government wrongfully took from him in 1961, his basic dignity and rights as a human being and an American citizen. If the Army alone, or the Executive Branch could make amends, I can assure you that it would be done. A close reading of Judge Richey's opinion make it equally clear that if the judiciary could correct the situation, it would be done. In this instance, however, the power to take full action rests only with the Congress. For these reasons, the Department of the Army, on behalf of the Department of Defense, strongly supports enactment of H.R. 5063 96th Congress, a bill "For the Relief of James R. Thornwell."

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

JILL WINE-VOLNER,
General Counsel.

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[6] Another document, prepared prior to initiation of Operation Third Chance, recognized the possibility that LSD, particularly when accompanied by the stress of an operational situation, might cause permanent harm. The same document recognized the legal and moral problems associated in an operational testing of LSD.

The entire treatment of these issues was rather inadequate, the bottom line being that the Army could always deny that the activity took place. The report noted that, even if permanent mental damage resulted from the LSD, the victim would be unlikely to prove his case because the LSD administration would be surreptitious, and no trace of LSD would remain after several hours.

Department of Justice,
Washington, D.C., October 10, 1979.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: This is in response to your request for the views of the Department of Justice on H.R. 5063, a bill entitled for the relief of James R. Thornwell. This Act would authorize the payment of the sum of $1.7 million to James R. Thornwell in satisfaction of all claims arising out of his 1961 interrogation by Army personnel which included the surreptitious administration to him of the drug LSD. At the time, Mr. Thornwell was on active duty in the United States Army. It would also satisfy claims arising from the failure of the Army and its officials in subsequent years to advise Mr. Thornwell of the use of the drug upon him and to offer him treatment.

The Justice Department favors prompt and full resolution of the Thornwell claims. The case is exclusively unique in that Mr. Thornwell as an American citizen was subjected to LSD by federal employees in an operational context without any vestige of knowledge or consent. Moreover, in asserting his claim he faces the substantial legal barrier of the *Feres* doctrine which holds that a soldier may not sue the government or its officers for injuries arising out of or incident to his military service. Thus, absent legislative action, resolution of the liability and damage claims could only occur, if at all, after prolonged judicial proceedings accompanied by substantial publicity, emotional strain and cost for all parties. In this regard, it is noted that, by contrast to the settlement value of a lawsuit, the amount of compensation available through a private bill is responsive to broader compensatory purposes. The amount can properly be calculated without reference to limitations in the Federal Tort Claims Act or such rules of law as the *Feres* doctrine. Enactment of H.R. 5063 would thus compensate Mr. Thornwell for the full range of damages that arose from his interrogation, the administration of LSD to him, and the sixteen years of nondisclosure that followed. Moreover, the bill underscores the basic principle that an individual citizen of this nation should be protected from unreasonable transgressions into his personal, mental and bodily integrity. There is no dispute that the use of drugs, chemicals or other substances without the prior knowledge and consent of the individual affected is not acceptable to American society.

As can be seen from the above comments, a case such as this one defies traditional tort damage analysis. The elements of emotional and mental damage cannot be calculated with any precision particularly when aggravated by years of nondisclosure. In view of the seriousness of the acts committed against Mr. Thornwell, the gravity of his injuries and the probability of his continued incapacity, the amount of the proposed compensation is consistent or compatible with the size of a judgment that could reasonably be anticipated from the court.

Accordingly, in view of the unique circumstances embodied in this matter, the Department of Justice would support favorable consideration by the Congress of H.R. 5063.

Sincerely,

Alan A. Parker,
Assistant Attorney General.

[The following letter and enclosures were sent to the House Committee on the Judiciary by Representative Ronald V. Dellums, the sponsor of this legislation:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
March 18, 1980.

Hon. GEORGE DANIELSON,
Chairman, Subcommittee on Administrative Law,
Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR GEORGE: As per our conversation regarding the James R. Thornwell private bill, H.R. 5063, I am enclosing a copy of the fact sheet and background information on this case. Favorable reports have been received from both the Department of Justice and Department of the Army.

Identical legislation, S. 1615, was introduced in the Senate by Senators Hollings, Thurman, Cranston and Hayakawa. This legislation passed the full Senate on February 26, 1980 and was referred to the House.

This legislation appears to have strong support both inside and outside of Congress. I urge you to schedule hearings on this legislation as soon as possible so that relief can be given to this young man for the injustices that he has suffered at the hands of our government.

Please contact me if I can be of assistance in expediting this legislation.

Sincerely,

RONALD V. DELLUMS,
Member of Congress.

BRIEFING PAPER ON PRIVATE LEGISLATION FOR JAMES R. THORNWELL

I. BACKGROUND FACTS

A. The LSD Experiment on Thornwell

In June, 1961, James R. Thornwell, then a United States Army private, was administered LSD without his knowledge or consent as part of a covert drug testing program conducted by the Army. For sixteen years thereafter, the Army deliberately concealed from Thornwell the fact of his exposure to this highly potent and hazardous drug, and, despite knowledge of the severe psychological and physical effects of this experiment, failed to provide him any follow-up care. It was not until October, 1977, and then only as the result of his own initiative in requesting Army records under the Freedom of Information Act, that Thornwell learned of his surreptitious subjection to LSD.

As documented in these Army records, Thornwell was the only American subject of "Operation Third Chance," a series of Army experiments performed in 1961 in Europe to test LSD as a "truth serum" in intelligence interrogations of individuals place under extreme physical and mental stress. Thornwell was stationed in France at this time, assigned to an Army message center in Orleans.

For six weeks immediately prior to his LSD drugging, Thornwell was almost continuously brutalized by agents of the Army Counter Intelligence Corps. During this period, Thornwell was solitarily confined in a small chamber with covered windows and deprived of food, drink, sleep, and the use of toilet facilities. His isolation was broken only by periods of interrogation about the disappearance of classified documents from the Orleans message center. During the interrogations, Thornwell was beaten, threatened, verbally degraded, injected with sodium pentothal and hypnotized by Army agents.

Climaxing these weeks of sustained brutality and deprivation, Thornwell was taken in June of 1961 to an abandoned mill outside of Orleans and given LSD. According to a report prepared by the Army team conducting the LSD experiment, Thornwell, already disoriented and weakened by the preceding weeks of stress, had an "extreme paranoic reaction" to the drug, the effects of which were "highly sustained and almost incapacitating." Thornwell, the Army team stated, experienced the "[m]ost profound behavioral effects of all subject[s] of Operation Third Chance."

While under these effects, Thornwell was again interrogated by inhumane methods including threats to extend his drug-induced state to a permanent condition of insanity. At no time, however, did the Army or any other investigating agency produce credible evidence of Thornwell's involvement in the disappearance of any classified documents, and all charges of misconduct by Thornwell were dropped.

B. The Damage Resulting to Thornwell

Prior to the months of physical and psychological anquish inflicted on him by the Army in 1961, Thornwell was a healthy, highly motivated and hard-working individual. He had no history of psychiatric disorders. Examinations of Thornwell by Army doctors before the LSD experiment confirmed that he was mentally sound and neither psychotic nor depressed. Thornwell's performance in secondary school was superior, earning him a college scholarship awarded to the most outstanding black student in his high school class. He completed one year of college before joining the Army, and had scholarship funds available for return to school after completion of his military service. Thornwell also had an active and successful social life.

The Army's LSD experiment on Thornwell, and its sixteen-year failure to treat his consequent illness or even to inform him of its cause, have left him a chronic social and emotional cripple. In marked contrast to his pre-1961 accomplishments and patterns of behavior, Thornwell has, since his discharge from the Army in 1961, been unable to maintain gainful employment except for short periods, and unable to sustain satisfying relationships with family or friends. Objective expert examiners have diagnosed him as suffering from serious psychiatric disorders attributable to his torture and drugging by the Army in 1961 and the Army's subsequent neglect of his condition. A medical specialist retained by the Army itself in 1978 confirmed the causal link between Thornwell's present impaired state and the extraordinary trauma he experienced in the 1961 experiment.

II. APPROPRIATENESS OF PRIVATE LEGISLATION

Thornwell's case is uniquely appropriate for private relief legislation. He is the only American whose rights were so flagrantly violated by the Army in the course of its LSD experiments; Army records clearly reflect that no other United States citizen was the subject of the "Operation Third Chance" LSD experiments or of any comparable Army LSD testing program using human subjects without their knowledge or consent. Moreover, the Army has acknowledged the facts recited above as to Thornwell's unwitting participation in this inhumane experiment and as to the Army's failure to inform him of his exposure to LSD or to provide any follow-up care.

Yet, Thornwell has been held to be barred from obtaining any judicial relief for the severe damage caused by the drug experiment on him. In October, 1978, Thornwell brought suit in the District of Columbia to obtain relief for the injuries suffered as a result of the LSD experiment and the Army's sixteen-year neglect of his resulting illness. On May 30, 1979, United States District Judge Charles Richey ruled that the United States and its officers are immune from liability to Thornwell for the injuries from his subjection to LSD in 1961 and other governmental abuse while he was in military service.

Both the Department of the Army and the Department of Justice have committed their full and vigorous support for this private legislation for Thornwell. Following is an itemization and documentation of the damages for which the legislation is intended to compensate Thornwell.

PRIVATE LEGISLATION FOR JAMES R. THORNWELL: DAMAGE ITEMIZATION AND DOCUMENTATION

The itemization of damages below and supporting materials attached hereto as Exhibit A and B establish the basis for private legislation compensating James Thornwell in the sum of $1,700,000. Both the Department of the Army and the Department of Justice consider this to be an appropriate and fully substantiated amount of compensation for Thornwell. Payment to Thornwell under the bill is contingent upon his relinguishment of all claims against the United States and its officers and agents.

1. Lost Earnings

(These figures have been calculated by an economic expert on the faculty of the Wharton School of the University of Pennsylvania. The expert's calculations, and his explanations therefor, are attached as Exhibit A. They are based on the assumption that Thornwell entered the workforce in 1965 when he was 27, after completing the college education he had begun before the 1961 LSD experiment left him physically and psychologically incapable of continuing.)

(a) Lost past earnings	$378, 000
Less estimated past earnings by Thornwell during brief, intermitten periods when he was able to work	42, 000
Subtotal	336, 000
(b) Loss future earnings	727, 000
Total	1, 063, 000

2. *Expenses for Psychiatric Care*

(These figures have been calculated in consultation with Thornwell's treating psychotherapist, an expert in the field who has observed Thornwell over a period of 18 months of intensive treatment. The expert opinion at present is that Thornwell's severe mental illness will require approximately five additional years of psychotherapy.)

(a) Past expense for psychiatric diagnosis and treatment	7, 200
(b) Futute expenses for psychiatric treatment	42, 000
Total	49, 200

3. *Physical and psychological injury* (*See exhibit B attached*)

(a) Injury from administration of LSD without Thornwell's knowledge or consent under conditions of extreme physical and mental stress (including six weeks of confinement and deprivation of food, drink and sleep, other physical abuse and threats of permanent insanity and death)—assault, battery, intentional infliction of mental distress, negligence, constitutional violations: (i) physical and mental pain and suffering; (ii) psychological damage (documented in reports prepared by three experts, including a medical expert retained by the Department of the Army)	293, 900
(b) Injury from government's sixteen-year failure to inform Thornwell of subjection to LSD or to provide any follow-up care—intentional infliction of mental distress, negligence, misrepresentation, constitutional violations: (i) physical and mental pain and suffering; (ii) psychological damage (documented in reports prepared by three experts, including a medical expert retained by the Department of the Army)	293, 900
Subtotal	587, 800
Total	1, 700, 000

ESTIMATED INCOME FOR 1965-79 OF MALES WITH 4 YRS OF COLLEGE WHO WERE 27 YRS OLD IN 1965

	Age (1)	Average mean income[1] (2)	Productivity increase from 1972[2] (3)	Estimated mean income at 1979 prices[3] (4)
1965	27	9, 517		15, 973
1966	28	10, 581		17, 759
1967	29	10, 882		18, 264
1968	30	11, 258		18, 895
1969	31	12, 959		21, 750
1970	32	13, 110		22, 004
1971	33	13, 829		23, 211
1972	34	14, 875		24, 966
1973	35	15, 406	1. 022	26, 426
1974	36	15, 902	1. 0445	27, 877
1975	37	16, 362	1. 0675	29, 315
1976	38	16, 787	1. 0910	30, 739
1977	39	17, 177	1. 1150	32, 145
1978	40	17, 531	1. 1395	33, 529
1979	41	17, 850	1. 1646	34, 890
Total				378, 000

[1] Source: U.S. Bureau of the Census, Current Population Reports, series P-60, No. 92, "Annual Mean Income, Lifetime Income, and Educational Attainment of Men in the United States, for Selected Years, 1956 to 1972," U.S. Government Printing Office, Washington, D.C., 1974, tables 9-18.

Income is money income, not including pension contributions, medical insurance benefits, and other income supplements.

Mean incomes for 1965-72, in 1972 prices, reflect 2 sources of growth: (1) the rise in incomes with age and experience, and (2) the rise in incomes at each age as a reflection of the rise in productivity of the economy at large.

Mean incomes for 1973-79, taken from a cross section of the appropriate ages in table 9 for 1972, embody only the growth of incomes with respect to age. They must be adjusted by an estimated growth factor, given in col. (3).

[2] Productivity increase of 0.022 per annum estimated from the average rate of growth of incomes of college graduates, age 34, from 1964 to 1972 as indicated in table 9; and the average rate of growth of output per hour of all persons in the private business sector from 1972 to 1977. (Data from Bureau of Labor Statistics, Department of Labor, as reported in the Annual Report of the Council of Economic Advisers, U.S. Government, 1978, table B-37, at 300.) The value of 0.022 is consistent with but somewhat below the long-term average rate of growth of output per man-hour in the economy since 1900.

Entries in col. (3) for years 1973-79 are $(1.022)^n$, where n—1 through 7.

[3] Price adjustments use the Consumers Price Index, Department of Labor, Bureau of Labor Statistics, Monthy Labor Review. Index for middle 1979 is estimated from December 1978 data and subsequent changes.

Entries in col. (4) for 1965-72 are col. (2)×210.3÷125.3. For 1973-79, entries are col. (2)×col. (3)×210.3÷125.3.

EXHIBIT A

ESTIMATED PRESENT VALUE IN 1979 OF LIFETIME INCOMES OF MALES WITH FOUR YEARS OF COLLEGE, AGE 42 IN 1980

The U.S. Bureau of the Census estimated that the expected average lifetime earnings of males with four years of college education in 1972 was 372,000 dollars.[1] The concept of income is money income, exclusive of pension contributions, medical insurance, and other income supplements.

The figure reflects expected changes in income that accompany changing age and expected mortality and worklife experience, but it assumes that the rate of growth of productivity and prices and the discount rate are all zero.

To adapt this estimate for use in 1979 it must be adjusted for the changes in productivity and prices from 1972 to 1979. Thus, with an estimated average annual growth factor of 0.022 [2] and an increase in the consumer price index from 125.3 in 1972 to 210.3 in 1979,[3] the comparable figure for 1979 is

$$372{,}000 \times (1.022)^{7} \times \frac{210.3}{125.3}, \text{ or}$$

$$372{,}000 \times 1.1646 \times 1.6784 = 727{,}000.$$

Future incomes would be expected to rise as a result of growth of productivity, in the range of 2 to 3 percent per annum, supplemented by the rate of increase of prices. On the other hand these rising future incomes must be discounted to present 1979 values at some appropriate rate of interest, such as the long-term government bond rate. Essentially, these factors tending to increase and decrease the present value of the future income stream tend to offset each other. In particular, rates of inflation and interest rates tend to rise and fall together. On balance, therefore, the present value in 1979 of expected average lifetime incomes of males at age 42 in 1980 can be estimated conservatively at $727,000.

EXHIBIT B

PSYCHOLOGICAL AND PHYSICAL INJURY

Injury such as that to be compensated as part of the award under this private legislation, consisting chiefly of psychological trauma, permanent damage and intense pain and suffering, is vertually impossible to quantify. Assigning a monetary value to the psychological and physical injury inflicted on James Thornwell involves unique problems. His situation is *sui generis:* no other American citizen was subjected to the "Operation Third Chance" experiments or any comparable Army LSD testing program; no other legislative or judicial award is known to which the amount provided under this bill for psychological and physical injury can be meaningfully compared. Moreover, the extreme governmental abuse for which this bill attempts to afford redress, committed in an earlier and different time, is peculiarly difficult for the contemporary mind even to comprehend.

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[1] From U.S. Bureau of the Census, *Current Population Reports*, Series P-60, No. 92, Annual Mean Incomes, Life-time Income, and Educational Attainment of Men in the United States, for Selected Years, 1956 to 1972. U.S. Governemnt Printing Office, Washington, D.C., 1974, Table 9.

[2] Productivity increase of 0.022 per annum estimated from the average rate of growth of incomes of college graduates, age 34, from 1964 to 1972 as inediated in Table 9; and the average rate of growth of output per hour of all persons in the private business sector from 1972 to 1977. (Data from Bureau of Labor Statistics, Department of Labor, as reported in the Annual Report of the Council of Economic Advisors, U.S. Government, 1978, Table B-37, at 300.) The value of 0.022 is consistent with but somewhat below the long-term average rate of growth of output per manhour in the economy since 1900.

[3] Price index is the consumers price index of the Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*. Index for 1979 is estimated from December 1978 data and subsequent changes.

The Army team that conducted the LSD experiment on Thornwell itself described his reaction to the drug as "extreme paranoiac," "highly sustained and almost incapacitating," stating that he experienced the "most profound behavioral effects of all subject[s] of Operation Third Chance." Over the longer term, the LSD experiment on Thornwell, and the Army's sixteen-year failure to treat his consequent illness or even to inform him of its cause, have left him a chronic social and emotional cripple. In marked contrast to his pre-1961 accomplishments and patterns of behavior, Thornwell has, since his discharge from the Army in 1961, been unable to maintain gainful employment except for short periods, and unable to sustain relationships with family or friends. Competent, objective examiners have diagnosed him as suffering from serious psychiatric disorders attributable to his torture and drugging by the Army in 1961 and the Army's subsequent neglect of his condition. A medical specialist retained by the Army itself in 1978 confirmed the causal link between Thornwell's present impaired state and the extraordinary trauma he experienced in the 1961 LSD experiment.

In sum, Thornwell's loss has been the loss of the ability to lead a normal, productive and satisfying life in human society, the ability to fulfill the high promise he demonstrated before his unwitting subjection to LSD experimentation.

In cases of much less profound intrusions into a human being's life and mind, court awards have not infrequently far exceeded the sum provided under this bill for the psychological and physical injury suffered by James Thornwell. That sum, $587,800, is surely the minimum amount in which Thornwell can fairly be compensated for such severe and permanent damage.

[The following letter to the attorneys of the claimant sets forth the findings regarding the psychological condition of the claimant. The psychologist who conducted the examination of the claimant was selected with the approval of the United States Department of the Army:]

ASSESSMENT, CONSULTATION
AND TREATMENT SERVICES,
November 21, 1977.

Re James Thornwell.

HARVEY KLETZ, LARRY MOLL,
Attorneys at Law,
5510 College Avenue,
Oakland, Calf.

DEAR MR. KLETZ AND MR. MOLL: At your request, I have been examining Mr. Thornwell in order to assess his present mental functioning and also to evaluate the effects upon him of the experiences he underwent with the interrogation and drugging procedures which occurred from March 15, 1961, through approximately the middle of June of 1961. My examination of Mr. Thornwell has now covered over 14 hours of direct contact with him, and I have also spent a number of hours in scoring and analyzing test results, and I have also reviewed various government documents which you provided for me.

The government documents that I reviewed included various memoranda of the Senate Select Committee, records of the Department of the Army, and specific materials which described such projects as Third Chance, Derby Hat, and Edgewood Arsenal Experiments. In addition, I also reviewed some school records that Mr. Thornwell provided for me.

The techniques of psychological examination included many hours of clinical interviewing, as well as the following psychological tests: Wechsler Adult Intelligence Scale, Wechsler Memory Scale, Bender-Gestalt, Draw-A-Person, Minnesota Multiphasic Personality Inventory, Rotter Sentence Completion Blank, and Rorschach Ink Blot Test.

Obviously, with this kind of comprehensive examination, I have amassed a great deal of information about Mr. Thornwell and a full report of all of those findings would be very lengthy. I will attempt in this report to summarize my findings and conclusions as succinctly as I can without sacrificing recognition of the most salient aspects of this case.

OBSERVATIONS

Mr. Thornwell is a 40-year-old, slim, proportioned, Black male. He was very punctual for all of his appointments, although he relies a great deal on all kinds of reminder systems, such as notes, reminders to get to certain places at certain times, etc. In addition, I also found him to be generally forgetful, particularly about recent events. Throughout the examinations, he was also bothered a great deal by head pain, but that varied very specifically with what we were talking about, and became most dramatic when we were discussing interrogation procedures. In three separate instances when we were discussing what happened to him during interrogation, he became so upset by his head pain as well as by weeping, that we had to suspend that discussion until he could regain his composure, which took 10 or 15 minutes.

I would consider his thinking style to be distinctly paranoid, although I do not find him to be schizophrenic, and he does not show severe fragmentation, looseness in ideas, and in fact in superficial conversation with him he seems fairly well integrated. However, as discussions continue, it is obvious that he is extremely alienated and withdrawn from contacts with people, views the world in extremely suspicious and mistrustful terms, all of which is very easy to understand after one gets to know what happened to him in the Army.

HISTORY

I will take some special liberties in summarizing Mr. Thornwell's history for the purposes of brevity. Basically, it is important to know that he was born in the South, that his parents, particularly his mother, stressed achievement and appearance, and that the work ethic was widely and soundly advertised to him. He began working when he was eight years old, and showed many signs of a belief in industry, achievement and getting ahead.

As far as school is concerned, he did very well academically, and was extremely sociable and active in extracurricular activities. He earned very good grades, enough to place him sixth in a class of 180, and he earned a scholarship as the most promising black male student, and on that basis entered South Carolina State College at Orangeburg. His extracurricular activities were widespread, and he was frequently president of all of the social clubs, and even won a trip to Washington, D.C., as a result of his public speaking abilities. He had no social difficulties as a child, was never arrested, and was apparently a pretty "troublefree" youth.

He developed fairly early in life an idea that he should leave the South and go to the North where he expected opportunities to be better for him, and he sought many opportunities to do that. When he left college after a year-and-a-half, he worked and attended night school where he studied accountancy. He was being paid $1.00 per hour at his job, and the Army seemed to be a good alternative for his own personal advancement, particularly since he was promised that he could attend accounting school, a promise he said was later unilaterally withdrawn.

In the Army, he was assigned duties of a clerk, and soon after given some very special assignments in the handling of classified documents. He feels that he must have been considered in very positive terms to be given this level of responsibility, duties which included analyzing such critical materials as the location of missile bases, and making decisions about where such documents would go and how they would be handled. He worked very hard on that job, often under great pressure to meet deadlines, but enjoyed the responsibility and also the status and generally felt rather good about his Army career. He also was enjoying the breaking of color barriers in terms of social and sexual relationships.

On March 14, 1961, his new-found lifestyle came crashing down. Two files of confidential records were stolen and he was one of eight men suspected of the theft. Mr. Thornwell speculates about why he was suspected, and centers mainly on the feeling that he was resented because he was too outspoken for a Black man, and also that his going out with White girls was unpopular. In any event, as a result of the investigation, the suspects were narrowed and eliminated until the focus was completely upon him. Despite the fact that he was told that polygraph examinations were inconclusive, the intensity of the investigation of him progressed, and he was to spend the next three months in an experience so bizarre and so destructive that it was to alter the next 16 years of his life.

INTERROGATION PROCEDURES

I have examined the government documents referred to above, and compared their accounts of the interrogation with the personal reports of James Thornwell. Although he went into much more detail with me, there was no substantial or important area of disagreement between those two versions, and as a result his accounts seem highly credible. I will not reiterate the details of that as you already know them well, except to say that the procedures included the administration of Sodium Pentothal, hypnosis, physical abuse, and various forms of mental torture.

In the protective custody situation which began on May 1, 1961, he was subjected not only to basic physical deprivation, but also the techniques of sensory deprivation were used against him, techniques which are experimentally known to cause extreme forms of mental illness. He regarded himself as being in an all-out war with his interrogators, and used all of his cunning and survival instincts in an attempt to ward off a complete mental breakdown. Some of the mental devices that he used are similar to those other prisoners of war have employed in attempts to retain their sanity.

Despite all of these forms of interrogation/torture, apparently the intelligence people were not satisfied with the information they were getting from him, and the final technique (assault) was the administration of LSD in early June of 1961. His memory about those events is very confused and sometimes not sequential, and in fact it was not until very recently that he even found out that LSD was administered to him. Because of some of the environmental circumstances, he had believed for all of these years that he was being subjected to electric shocks and charges. For all of these ensuing 16 years, he could not understand, nor explain to himself, what had occurred, and this terrible gap in his memory and in his understanding caused even further consolidation of his mental illness.

The government records admit to all of these torturous techniques, admit further that they were of no benefit in interrogation, and also allow for the fact that these techniques cause great mental damage. There is a specific reference obviously to Thornwell, "At least one subject (the U.S. soldier) exhibited symptoms of severe paranoia while under the influence of the drug." In another statement, there is a reference as follows: "The unanimous opinion of the psychiatrists who evaluated Thornwell, that he had severe psychiatric disorders." Despite the pretrial opinion that there was enough material to pursue a Court Martial, that process was suspended because of such reasons as "prolonged interrogation, the soldier's recollection of bizarre methods, and the unanimous opinion of the psychiatrists who evaluated the soldier that he had severe psychiatric disorder." It seemed a little too late to be shutting the barn door, however.

Following his discharge from the Army, he struggled for a very long time in trying to recall what happened to him, and described the sensation that is probably most descriptive of what happened to him, "My mind had been erased." Though there was a partial return of memories, he never really recovered complete memory for the events, and he spent the next months in a very agitated state, highly anxious, and feeling extremely cut off from himself and his ties. Attempts to visit various family members all over the country were not successful in helping him find himself, and he felt humiliated and degraded.

In his return to civilian life, this soldier whose pre-interrogation personality had so emphasized achievement and accomplishment, suddenly found himself without any drive, endurance, or desire to make something of himself. He attempted to work, but his ability to stick with jobs became increasingly short-lived, and in the past 17 years he estimates some 30 or 40 jobs, the majority of them lasting no more than a few months at a time.

In the area of interpersonal relationships, his record is equally impoverished, and he has been just as transitory and unsatisfiable in these relationships as he was in his jobs. He attempted two marriages, the first ending in a separation after 90 days, and a very recent one which ended in separation after two or three weeks. In these relationships, as in all of his other attempts to achieve intimacy, he found himself to be too irritable, unsatisfiable, restless, and not capable of forming any kind of lasting or enjoyable relationship. His general social life also changed, and he has become and remained extremely withdrawn, and now is of the status that "Tends to enjoy my own company more than anyone else." Many people choose to live this way, but what is most outstanding about James Thornwell is how dramatic a change that is from his previous sociable and active lifestyle.

Other changes include the almost constant headaches that he has, continual states of anxiety and paranoia, and periods of such intense withdrawal that he even developed the idea that his voice had fallen into disuse and he had to regain the ability by practicing via talking to the radio. There are other signs of ideation which is very bizarre, indicative of a pathological level of turning inside of himself, and subsequently the loss of ability to relate to others in any effective or satisfying way.

PSYCHOLOGICAL TEST RESULTS

According to psychological examination, he has an intelligence which is classified as Bright Normal, at approximately the 82nd percentile of the population. There is no way, of course, to know whether or not this represents any deterioration from a previously higher level.

The psychological test results also do not point strongly in the direction of diagnosing organic brain damage, although they cannot be considered as conclusively ruling out this possibility either. A further analysis of the subtest results indicates a somewhat lower score on social ecomprehension as well as in the area of coordinating visual and motor movements. There were also some other indications which were reminiscent of flash-back-types of experiences to what had occurred to him during the LSD interrogation.

Tests of memory indicate no significant memory loss, and other psychological tests were in the direction that is so frequently seen in drug abusers. For example, in his drawing of the person, he produced some of the facial features that are so frequently seen in persons who have had psychedelic experiences, and the drawings also contain signs of a person who is basically hypervigilant and paranoid in orientation. Some of the other drawing characteristics indicate a person who feels very powerless and impotent, and there were other signs which are often indicators of serious emotional disturbance.

The results of psychometric testing indicate a 93 per cent probability of a significant emotional disturbance, and the computer report of these results indicated again paranoid thinking, the possibility of ideas-of-reference, fixed false beliefs, and persecution tendencies. In fact, the computer printout's diagnostic impression is "Paranoid Reaction." Personality tests which were administered again confirm his need to avoid interaction with his environment and with people, depressive themes, hopelessness about the future, and in fact some difficulties in dealing with consequences of time. The personality testing also revealed that he has difficulty in differentiating reality from fiction, and that a great deal of energy is being spent in keeping himself emotionally distant from what he sees. The tests also indicate that he has the potential for very complex and creative thought processes, but instead what comes through are associations which are loose and disorganized. There was also some indication that his present pathology is not life-long in the sense that it did not interfere with his cognitive development up to a certain point, and that pathology occurred after he was already mentally developed, i.e., post-adolescence.

His fantasies as measured by the personality tests indicate fears of being attacked, concern with predatory creatures, and impairment in reality testing under certain kinds of conditions.

SUMMARY

I. Prior to James Thornwell's experience with Army interrogation and torture procedure, he did not suffer from any mental disease or defect. In fact;

II. His history indicates that prior to induction into the Army, he he was an above average student, had high motivation for achievement and success and was consistently beginning to pursue his goals.

III. Prior to entering the Army, he sought ways of leaving the ghettoizing effects of living in the deep South of pre-and-post World War II, and saw the Army as his vehicle for personal development and advancement.

IV. His Army experience were beginning to fulfill some of these expectations, in terms of freer access to an integrated world, the trust placed upon him in being selected to work with classified documents, etc.

V. His arrest constituted a "sucker punch" to these expectations, and created a kind of Kafkaesque effect which included surprise, a regression effect to how he had been treated as a Black man in the South, and eventually his reaction to the techniques of interrogation.

VI. The specific techniques employed to investigate him caused a severe mental breakdown, and the evidence of that is seen not only in the present psychological examination, but also in the dramatic way that his life has changed, the admissions of these techniques and their effects contained in government records, plus what is already documented in psychological literature about the effects of chemical warefare against an individual and the use of psychological techniques of torture.

VII. The Army's decision to terminate his "interrogation" did not end these effects for him. His mental state and, indeed, his life were irreparably damaged, and he developed, as a result, a Borderline Psychotic condition which prevails today.

VIII. The specific damages that he has suffered have been fueled by the fact that he never knew what had happened to him, and as much as he could not explain it to others, he could not even explain it to himself. This is a "crazy-making" formula, a set of circumstances in which one knows that something is terribly wrong, but cannot get any validation from others, nor really adequately explain it to himself.

Up until the recent declassification of documents, he was in the position of a "weirdo", someone who ran around saying something has happened, could not quite say what it was and certainly could not get anyone to believe or validate his complaints.

Again, the most compelling evidence of what has happened to Mr. Thornwell is seen in how he has been living for these last 16 years, a life that is best described by his phrase, "I felt like my mind was being erased." Erased from his mind was everything that related to his aspirations, his manhood, his abilities, his trust in other people, his capacity for enjoyment, and all of those qualities that have to do with how a person retains a sense of identity.

The combination of brutalities, both physical and mental, took their toll, and the administration of LSD put the final lid on his mental coffin. I must stress again the terrible effect of not having known what happened to him, and in that gap existed the ingredients for the continuing torture that he experienced in the next 16 years. Just as in a very slow acting drug, the results continued far beyond the mere administration of the "medicine."

As I told you previously, he will require a very long-term treatment, although there are many negative indicators about success for treatment, including his hopelessness, his mistrust, and his dedication to avoiding those kinds of interactions which psychotherapy requires. I have recommended a multiple form of treatment, including hypnosis and also depth analysis. I estimate that it would be difficult to imagine any kind of substantial results to occur in less than two or three years worth of treatment, and that is considering at least three sessions per week, approximately 300 to 450 hours of intensive psychotherapy.

I hope that this briefer report is of some help to you in consolidating my findings, and I will continue to see Mr. Thornwell for the dual purposes of continuing the investigation of his mental status as well as to attempt to give him some support and, perhaps, lay the ground work for later psychotherapeutic efforts.

Respectfully Submitted,

PAUL S. BERG, PH. D.,
Licensed Psychologist.

[The following letter is an update on the psychological condition of the claimant:]

PAUL S. D. BERG, PH.D. & ASSOCIATES,
June 10, 1980.

Re: James Thornwell.

MS. JUDY LESSER,
Wald, Harkrader & Ross,
1320—19th Street, NW.,
Washington, D.C.

DEAR MS. LESSER: I wanted to bring you up to date regarding my treatments of my patient and your client, James Thornwell. Since we last talked a number of months ago, I have continued to treat him on essentially a once-per-week basis. He has also continued to be very cooperative with treatments, attending punctually, and with continued interest in exploring the issues that have to do with his problems and his symptoms.

Symptomatically, he is essentially the same as I have described him in my previous report. The areas of some improvement have been that he seems to be slightly less withdrawn, more willing to relate in a way that is less guarded, and he also has periods in which he seems a little more activated and energized. However, beneath this, the more essential problems remain essentially the same, and that is that he is still withdrawn and does not have the ability to form lasting or continued or intense relationships, that he remains extremely suspicious and mistrustful of others, and there is also a very profound underlying depression.

In our therapy sessions, from time to time and when he seems best able to tolerate it, we explore the events surrounding the administration of LSD, and he has been able to relive aspects of that at least partially, but he is still not able to remain with the feelings long enough to work through any substantial change in his personality. After such a long period of treatment, I regret that my initial pessimism regarding his ability to progress is being borne out, and the best that I can expect is a very slow and painstaking course. In fact, my previous estimates that he will require many years of continuing therapy remain unchanged, and the best, or at least the most realistic, hopes for that are simply to help him to achieve some semblance of stability and to handle everyday life problems. I cannot foresee that there will be a major personality reorganization or that he can regain the kinds of capacities that I felt he lost as a result of his treatment in the Army. Specifically, I am referring to my pessimism about him ever being able to be intimately involved with others, to sustain activities, to have much in the way of mental endurance, to be able to work and earn a living, or to be other than a "visitor" on this earth.

I shall of course continue to treat him as he is very much in need of this relationship, and after almost two years of such treatment, we at least have developed a positive but "careful" relationship, and one which I think is of great importance to him.

If you have any questions about his situation which you would like to discuss, as always please feel free to call upon me.

Yours truly,

Paul S. D. Berg, Ph. D.,
Licensed Psychologist.

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96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1268

ELIMINATION AND MODIFICATION OF CERTAIN REPORTS TO CONGRESS

August 28, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. Brooks, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 6686]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 6686) to discontinue or amend certain requirements for agency reports to Congress, having considered the same, reports favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text, which appears in italic type in the reported bill.

Summary and Purpose

H.R. 6686 affects 131 reports furnished by the executive branch to the Congress and has two purposes: (1) to authorize the elimination of reports considered no longer necessary and (2) to modify others by providing for their simplification, requiring them less frequently by changing the report dates, or by consolidating several reports. By statute, these reports are made to Congress at specific intervals by various executive departments and agencies.

Over the years, such statutory requirements for reports have proliferated—to a total of 2,300 at this time. Each Congress requires more and more reports—for example, 200 new reportings were mandated during the 1960's and almost 800 new reportings were mandated in the 1970's. A review of the continuing necessity for information required by statute to be submitted to the Congress has been undertaken by the Congress only on an irregular basis.[1]

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[1] Previous such reviews have resulted in the enactment of laws in 1954 (Public Law 706, 83d Congress, 68 Stat. 966), 1960 (Public Law 86–533, 74 Stat. 245), 1965 (Public Law 89–348, 79 Stat. 1310), and 1974 (Public Law 93–608, 88 Stat. 1967) eliminating or modifying a number of reports.

GENERAL DISCUSSION

H.R. 6686 is the result of recommendations received from the General Accounting Office and the Office of Management and Budget to eliminate or modify certain reports. The General Accounting Office work was based on a mandate contained in the Legislative Reorganization Act of 1970, as amended in 1974:

> The Comptroller General shall assist committees in developing their information needs, including such needs expressed in legislative requirements, and shall monitor the various recurring reporting requirements of the Congress and committees and make recommendations to the Congress and committees for changes and improvements in their reporting requirements to meet congressional information needs ascertained by the Comptroller General, to enhance their usefulness to the congressional users and to eliminate duplicative or unneeded reporting.[2]

In a letter from the Comptroller General dated March 13, 1980, the GAO recommendations were submitted to the committee.

In compiling its list, staff of the General Accounting Office contacted affected congressional committees for concurrence with the GAO recommendations.

The list which the Office of Management and Budget submitted on November 29, 1979, was precipitated by a specific request from the President to his staff to determine whether the need for the myriad of reports compiled by the Executive agencies was still current. The Office of Management and Budget submission was composed of reports suggested by the individual agencies without consultation with congressional committees.

Following the introduction of H.R. 6686, each House committee chairman was contacted by the Government Operations Committee by letter asking whether the requirements for informational reports listed in the bill were still timely. Followup contacts by staff of the Government Operations Committee were made to insure that responses were received from every House committee.

EXPLANATION OF COMMITTEE AMENDMENT

In an effort to assure that the Congress continues to receive the information necessary to fulfill its oversight function, the Committee on Government Operations acceded to any requests from the relevant committees to delete certain reports from the bill and to modify the language affecting other reports.

H.R. 6686, as reported by the Legislation and National Security Subcommittee, consisted of an amendment in the nature of a substitute. Provisions in this amendment affected 156 reports, 104 less than in the original bill. During markup by the full committee, the substitute was adopted and 25 additional reports were deleted. Thus, as reported by the full committee, 131 reports are affected, either by elimination or modification by this legislation.

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[2] Public Law 93–344, Sec. 801 (31 U.S.C. 1152(d); 88 Stat. 327).

The bill as reported is an amendment in the nature of a substitute. The contents of this report, therefore, constitutes a full explanation of the amendment.

HEARINGS

The Legislation and National Security Subcommittee of the Committee on Government Operations held hearings on H.R. 6686 on July 24, 1980. Testifying in favor of the legislation were Mr. Morton Myers, Director, Program Analysis Division of the General Accounting Office, and Mr. Wayne Granquist, Associate Director for Management and Regulatory Policy of the Office of Management and Budget.

Mr. Myers testified that in fulfilling its mandate in the Legislative Reorganization Act of 1970 (as amended by the Congressional Budget Act of 1974), the GAO has compiled a comprehensive inventory of reporting requirements. This inventory is computerized and includes both statutory and non-statutory requirements. GAO's work indicates that there are at present 2,300 congressionally mandated recurring reporting requirements, and these requirements are growing at the rate of several hundred per Congress.

In response to a question from the chairman, Mr. Myers indicated that the 235 reports contained in the original H.R. 6686 represent an annual cost to the Government of $9 million or "40 percent of the total cost incurred annually for the 2,300 reports."

A current study being done by the General Accounting Office will evaluate the relevancy of existing requirements, the adequacy of the agencies compliance with such requirements, and their use to congressional committees in their work in the budget and oversight areas. The results of this study most likely will be issued in several reports scheduled for completion in 1981.

In assessing ways for the Congress to control the proliferating statutory information requirements and the resulting costs, Mr. Myers stated "We believe that the value of reporting requirements should be assessed during the legislative initiation and reauthorization processes. That is, drafters of legislation should compare the potential benefit of a reporting requirement with the increased paperwork and the related cost that would be generated by the requirement."

The witness from the Office of Management and Budget, Mr. Wayne Granquist, listed for the committee the beneficial effects of the enactment of H.R. 6686:

> First, it will reduce significantly both staff time and fiscal costs to the many agencies that prepare reports;
>
> Second, it will permit agencies to use these savings for other, more important functions;
>
> Third, it will permit agencies to concentrate on those remaining reports to Congress that are to be retained and are necessary for congressional oversight; and
>
> Finally, it will allow the Congress to focus on those continuing, important reports.

Suggestions made for alternative approaches to statutory reporting requirements include giving more flexibility to the executive branch in terms of the method of reporting, the time interval of reporting, requiring reports on an as-needed basis, or consolidating reporting requirements within individual agencies.

COMMITTEE ACTION AND VOTE

On July 28, 1980, the bill, as amended, was ordered reported unanimously by the full committee on a voice vote, a quorum being present.

CONCLUSION

It is the committee's view that the elimination or modification of the 131 reporting requirements affected by this legislation will enhance governmental economy and efficiency. This will result in an increase in the time which Government employees have for work in priority areas. Reports cited in the bill are changed by requiring that they be simplified, provided less frequently, consolidated with a related reporting requirement, provided in a more timely manner, or eliminated if the same information can be provided in a more effective manner. These changes will enhance the utility of the remaining informational reports provided to the Congress and lessen the dangers of their being obscured by other items with less priority.

SECTION-BY-SECTION ANALYSIS

Listed below are the reports affected by the bill, together with a short explanation of their content. House committees indicated no objection to making the changes incorporated in the amendment.

TITLE I—ELIMINATIONS

Reports by More Than One Agency

Section 101 (a) repeals the requirement of Section 404 of Public Law 81–152 (40 U.S.C. 514(d); 63 Stat. 398) that the head of each executive agency responsible for the disposal of foreign excess property submit an annual report to Congress.

(b) Repeals the requirement of Section 304 of Public Law 90–577 (42 U.S.C. 4224; 82 Stat. 1102) that the heads of executive agencies submit an annual report to the Congress on the scope of technical services provided by that agency to State and local governments.

(c) Deletes the requirement of Section 4396 of the Revised Statutes (16 U.S.C. 744; 24 Stat. 523) for an annual report by the Secretary of the Interior or by the Secretary of Commerce, as appropriate, to the Congress of expenditures made under all appropriations for propagation of food-fishes.

Reports by the Department of Agriculture

Section 102 (a) deletes the requirement for a semiannual report to Congress on the circumstances of negotiated contracts for the disposal of mineral materials by the Secretary of Agriculture or the Secretary of the Interior (30 U.S.C. 602(b); 76 Stat. 588).

(b) Repeals the requirement that the Secretary of Agriculture report annually to Congress on use of funds and progress toward completion of the planned national forest reforestation program. This information is used internally and could be made available to Congress as needed (16 U.S.C. 576e; 86 Stat. 678).

(c) Repeals the requirement in the Rural Development Act of 1972 (7 U.S.C. 1010a; 86 Stat. 670) that the Secretary of Agriculture issue a report at not less than five-year intervals reflecting soil, water, and related resource conditions. This information can be included in the Resource Conservation Act reports and is thus not needed separately.

(d) Repeals the requirement that the Secretary of Agriculture report annually on the disposition by the Commodity Credit Corporation of all stocks of agricultural commodities which it holds. The report includes the quantities of surplus commodities on hand, the method of disposition used or to be used in the preceding and succeeding twelve months, a program for the expansion of markets for surplus agricultural commodities, and recommendations for legislation necessary to accomplish these things (7 U.S.C. 1851(b); 70 Stat. 198).

(e) Repeals the requirement that the Secretary of Agriculture report annually to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry on the effectiveness of the Emergency Livestock Credit Act of 1974 (7 U.S.C. prec. 1961 note: 89 Stat. 214). Such reports include the number of loan applications submitted, the number and amount approved, the financial situation facing cattle farmers at the time of the report, and the effect of the Act on the retail marketing of beef.

(f) Repeals the requirement in the Agricultural Act of 1970 (7 U.S.C. 1350a; 84 Stat. 1378) that the Secretary annually file a report with the President for transmission to the Congress on the Upland Cotton Program. This report includes information on the amount of funds spent under the program, the purposes for which they were spent, the basis for participation in such program in the various States, and an appraisal of the effectiveness of the program.

(g) Deletes the requirement that the Secretary of Agriculture report annually to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry on the Department's activities in giving language training to families of Department employees in anticipation of their being assigned abroad (7 U.S.C. 1762(f); 90 Stat. 1500).

(h) Repeals the requirement that the Commodity Credit Corporation file an annual report on its activities with the Secretary of Agriculture who shall forward a copy to the President for transmission to the Congress. The statement of financial conditions and operation of the corporation provides all the data in the report and has a more timely release (15 U.S.C. 714k; 62 Stat. 1073).

Reports by the Department of Commerce

Section 103 (a) deletes the requirement in Section 213(c) of the Merchant Marine Act, 1936, (46 U.S.C. 1123; 49 Stat. 1991) that the Secretary of Commerce submit to the Congress an annual report on the relative cost of ship building in the various coastal districts of the United States.

(b) Deletes the requirement in Section 13 of the Merchant Ship Sales Act of 1946 (50 U.S.C. app. 1746; 60 Stat. 50) that the Secretary submit an annual report of activities under that Act.

(c) Repeals the requirement for a separate annual report and legislative recommendations under Section 9(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742h(a); 70 Stat. 1123). These reports are required to be made by the Secretary of the Interior and the Secretary of Commerce.

(d) Amends Section 5(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742d(a); 70 Stat. 1121) which provides for investigations, studies and reports by the Secretaries of Commerce and the Interior with respect to a number of specified areas which are of public interest in connection with any phases of fish and wildlife operations. The amendment deletes the requirement for reports to the public, the President and the Congress on these investigations and studies.

(e) Repeals the requirement for an annual report authorized by the Act of June 16, 1948 (15 U.S.C. 313, note; 62 Stat. 470) on the study by the Department of Commerce on thunderstorms and atmospheric disturbances.

Reports by the Department of Defense

Section 104 (a) deletes the requirement that the Secretary of Defense submit semiannual reports to the Committees on Armed Services of the Senate and House of Representatives containing copies of suggestions received from each retiring commissioned officer and each retiring civilian employee above grade GS–12, who was employed in or assigned to military procurement within one year of retirement, concerning methods to improve procurement procedures, and the response of the Department of Defense to each suggestion (10 U.S.C. 2390(b)).

(b) Section 2110(b) allows the Secretary to provide a flight instruction program for members of the Senior Reserve Officers Training Corps (ROTC) as part of logistical support. Striking the sentence deletes the requirement for a report on the flight instruction program (10 U.S.C. 2110(b)). The information in the subject report is duplicated in the Annual Report on Reserve Forces.

(c) This section deletes the requirement for a report on or before the fifteenth day of January in each calendar year to the respective Committees on Post Office and Civil Service of the Senate and House of Representatives by the Secretary of Defense on separated and new teachers in the Overseas Dependent Schools of the Department of Defense (20 U.S.C. 903(e); 73 Stat. 214).

(d) This section deletes the requirement for annual reports to the Congress by the Chief of Engineers of the United States Army stating what deterioration has taken place in connection with any works or river and harbor improvements under his charge, together with an estimate of the cost of rebuilding or repairing such works or removing obstructions, and his recommendations for the discontinuance of appropriations for any river and harbor works which he may deem unworthy of further improvement (33 U.S.C. 549; 30 Stat. 1150).

Reports by the Department of Energy

Section 105 (a) deletes the requirement that the Secretary of Energy, pursuant to Public Law 94–413, submit to the Congress annually a report on all activities being undertaken or carried out pursuant to that Act (15 U.S.C. 2513; 90 Stat. 1270). The reporting requirement can be met adequately by the Department of Energy's annual report as mandated in Public Law 95–91, section 657.

(b) Repeals the reporting requirements of section 365(c) of Public Law 94–163 (42 U.S.C. 6325(c); 89 Stat. 935). The Secretary of Energy is required by Public Law 94–163 to submit annually to the Congress and the President a report on the operation of the program under Part C of Title III of such Act which relates to State energy conservation programs, and to furnish copies of such report to the governors of each State. The Energy Management Partnership Act of 1979 recently submitted to the Congress, eliminates the need for this report and supplants it and certain other reporting requirements with a new consolidated reporting requirement which will be included in the Department of Energy annual report under Section 657 of the Department of Energy Organization Act, Public Law 95–91. The report required by Public Law 94–163 is therefore no longer needed.

(c) Deletes the requirement under Section 7(c)(4) of Public Law 94–413, as amended (15 U.S.C. 2506(c)(4); 90 Stat. 1264), that the Secretary of Energy submit an explanation to the Speaker of the House, President of the Senate, and congressional committees relating to any failure to include certain numbers of vehicles in the electric and hybrid vehicle research, demonstration and development program. This reporting requirement can be met adequately by the Department of Energy's annual report as mandated in Public Law 95–91, Section 657.

(d) Deletes the requirement that certain activities under Section 19 (l) of Public Law 93–577 (42 U.S.C. 5919(l); 92 Stat. 69) be reported to the Congress. This reporting requirement can be met adequately by the Department of Energy's annual report as mandated in Public Law 95–91, Section 657.

(e) Deletes the requirement that certain activities under Section 20 of Public Law 93–577 be reported to the Congress (42 U.S.C. 5920(d); 92 Stat. 85). This reporting requirement can be met adequately by the Department of Energy's annual report as mandated in Public Law 95–91, Section 657.

(f) Deletes the requirement expressed in Section 310(a) of Public Law 95–238 that certain activities under Title IV of Public Law 95–238 be included in the annual report submitted under Section 15(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 (15 U.S.C. 2709(a); 92 Stat. 83). This reporting requirement can be met adequately by the Department of Energy's annual report as mandated in Public Law 95–91, Section 657.

(g) Deletes the requirement under subsection 12(d) of Public Law 93–409 (42 U.S.C. 5510(d); 88 Stat. 1076) that the Secretary submit annually a special report summarizing the activities of the Federal officers and agencies having functions under that Act since the Secretary can include such a summary in his annual report to the President and the Congress.

Reports by the Departments of Education and Health and Human Services

Section 106 (a) deletes the requirement that the Secretary for Education submit to the Congress a comprehensive evaluation report on expiring education programs with a recommendation on whether or not the Congress should reauthorize the programs (20 U.S.C. 1226d; 88 Stat. 564). (The Secretary includes this information in his annual evaluation reports required by Section 417, Subpart 2, Part B, General Education Provisions Act.)

(b) Deletes the requirement that the Secretary of Education make an annual report on graduate fellowships and assistance awarded under title IX, Higher Education Act (20 U.S.C. 1123r–2; 90 Stat. 2164).

(c) Deletes the requirement that the Secretary of Education report annually to the Congress on the effectiveness of general assistance to graduate schools awarded under Title IX, Higher Education Act, and include recommendations on the continuation, modification, or extension of the assistance (20 U.S.C. 1134s(f); 86 Stat. 380).

(d) Deletes the requirement that the Secretary of Education and the Secretary of Labor report annually to the President and the Congress on the impact of bilingual vocational training (20 U.S.C. 2412(a)(3); 90 Stat. 2206).

(e) Deletes the requirement that the Secretary of Education prepare and transmit to the Congress with the Secretary's annual report a catalog of all Federal education assistance programs (20 U.S.C. 1231 b; 84 Stat. 167). (The Office of Management and Budget includes information on these programs in its Catalog of Domestic Programs.)

(f) Deletes the requirement that the Secretary of Education submit annually to the Congress a report on the personnel needs and assignments of the Office of Education (20 U.S.C. 1221c(c)(3); 88 Stat. 560).

(g) Deletes the requirement that the Secretary of Education make an annual report to the Congress on the establishment and operation of centers on education media and materials for the handicapped (20 U.S.C. 1453(c); 84 Stat. 187).

(h) Removes the requirement that the Secretary for Education report annually to the President and the Congress on results of activities conducted under the lifelong learning program (20 U.S.C. 1015c; 90 Stat. 2089).

(i) Deletes the requirement that each federal department or agency submit to the Secretary of Health and Human Services an annual report on progress in carrying out the requirements of the Age Discrimination Act of 1975, including data on age discrimination, and that the Secretary compile these reports and submit them to Congress together with an evaluation of the performance of each department or agency (42 U.S.C. 6106a; 92 Stat. 1556).

(j) Deletees the requirement that the Secretary of Health and Human Services notify the appropriate committees of Congress on improvements to private property of Migrant Health Centers (42 U.S.C. 254c(e)(5); 92 Stat. 3559).

(k) Deletes the requirement that the Secretary of Health and Human Services notify the appropriate committees of Congress on improvements to private property of Community Health Centers (42 U.S.C. 2689g(b)(1)(B); 89 Stat. 238).

(l) Deletes the requirement that the Secretary of Health and Human Services submit through the President to the Congress and to the Office of Science and Technology an annual report on the health activities under the Federal Mine Safety and Health Act (30 U.S.C. 958(b); 83 Stat. 803).

(m) Deletes the requirement that the Secretary of Health and Human Services submit to the President and the Congress an annual report on the development and evaluation of test methods under the Toxic Substances Control Act (15 U.S.C. 2626; 90 Stat. 2049).

(n) Deletes the requirement that the Secretary of Health and Human Services periodically submit to Congress legislative recommendations on home dialysis and transplantation (42 U.S.C. 1395rr (c)(6); 92 Stat. 312).

(o) Deletese the requirement that the Secretary of Health and Human Services report annually to the Congress on the number, membership, and activities of advisory committees established under Section 1114(f) of the Social Security Act (42 U.S.C. 1314(f); 76 Stat. 190).

(p) Deletes the requirement that the Secretary of Health and Human Services transmit a biennial report to the Congress containing current information on the health consequences of using marijuana and recommendations for legislative and administrative action as the Secretary may deem appropriate (42 U.S.C. 242, note; 84 Stat. 352).

(q) Deletes the requirement that the Secretary of Education report to the Congress on the number of teacher training fellowships for bilingual education recommended for the fiscal year (20 U.S.C. 3233(a)(2); 92 Stat. 2276).

Reports by the Department of Housing and Urban Development

Section 107 (a) deletes the requirement that the Secretary of Housing and Urban Development submit by March 1 of each year annual reports describing co-insurance operations under Section 244 of the National Housing Act (12 U.S.C. 1715z–9; 88 Stat. 679).

(b) Deletes the requirement that the Secretary of Housing and Urban Development report annually to the Congress with respect to research and demonstration programs for preventing abandonment carried out under Section 505 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–4; 84 Stat. 1737).

(c) Deletes the requirement that the Secretary of Housing and Urban Development report to the Congress each instance in which he has required the Secretary of Defense to guarantee the FHA's General Insurance Fund against losses with respect to mortgages insured under Title VII of the National Housing Act (Armed Services Housing Mortgage Insurance) (12 U.S.C. 1748b(b)(2); 63 Stat. 571).

(d) Deletes the requirement that the Secretary of Housing and Urban Development report to the Committees on Banking and Currency of the Senate and House of Representatives each instance in which land acquired under Section 704 of the Housing and Urban Development Act of 1965 (Advance Acquisition of Land Program) will not be utilized for a public purpose within 5 years (42 U.S.C. 3104(c); 82 Stat. 533).

Reports by the Department of the Interior

Section 108 (a) deletes the requirement for the Secretary of the Interior to submit proposed research contracts exceeding $25,000 to the President of the Senate and the Speaker of the House of Representatives (42 U.S.C. 1900(d); 80 Stat. 951).

(b) Deletes the requirement for the Secretary of the Interior to report to each regular session of Congress on surveys of lands within limits of railroad grants (43 U.S.C. 886; 28 Stat. 937).

(c) Deletes the requirement for the Secretary of the Interior to submit a feasibility report to Congress on the construction of the Uintah unit of the Central Utah reclamation project in the Upper Colorado River Basin (43 U.S.C. 620; 82 Stat. 897).

(d) Deletes the requirement for the Secretary of the Interior to submit to the President and to the Congress a report and finding of feasibility on construction of facilities of the Lower Teton division of the Teton Basin Project, Idaho (43 U.S.C. 616qq(c); 78 Stat. 926).

Report by the Department of Justice

Section 109 repeals subsection 19(d) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5919; 92 Stat. 64) and eliminates the requirement that the Attorney General *inter alia* submit written comments for a congressional report on the competitive impact of each guarantee and cooperative agreement under the Act.

Report by the Department of Labor

Section 110. This report-eliminating amendment would remove the requirement enacted in 1900 that every year (every 5 years from 1905, as amended by Act of April 8, 1904) the Commissioner of Labor, now the Commissioner of Labor Statistics, gather, compile, and report statistical details regarding "commercial, industrial, social, educational, and sanitary conditions of the laboring classes in the territory of Hawaii," and "to ascertain the * * * number of employees engaged in the various industries in the Territory * * * classified as to nativity, sex, hours of labor, and conditions of employment. * * * (31 Stat. 155). Because Hawaii is now a State, the Federal Government, including the Department of Labor, collects, compiles and publishes relevant statistics on Hawaii which are required for all States. This 1900 requirement is, therefore, unnecessary.

Reports by the Department of State

Section 111 (a) deletes the requirement that the Secretary of State make regular reports on the controls instituted by countries in the common market for Communist countries (COCOM) (22 U.S.C. 1613a (b); 65 Stat. 647).

(b) Deletes the requirement that the Secretary of State transmit to certain committees a copy of each foreign fishing application approved under the conditions of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1824; 90 Stat. 344).

Reports by the Department of Transportation

Section 112 (a). This section eliminates the requirement for the Secretary of Transportation to make a separate report on the Implementation of National Transportation Policy. The annual report of the Department of Transportation provides a vehicle for providing the required information (49 U.S.C. 1702(b); 84 Stat. 219).

(b) (1). This section eliminates the requirement for the Secretary of Transportation to submit a semi-annual report to Congress on Federal-aid highway construction contracts which are awarded by a method other than competitive bidding (23 U.S.C. 112(b)).

(2) Deletes the requirement for the Secretary to report periodically to the Congress progress on studies of economic highway geometrics, structures, and desirable weight and size standards for vehicles using public highways and the feasibility of uniformity in State regulations with respect to such standards (23 U.S.C. 307(b)).

(c) Deletes the requirements that the Secretaries of Defense and Transportation send annual reports on the awards program to the President for transmittal to Congress as required by section 1 of Public Law 89–198 (10 U.S.C. 1124(g)).

(d) Deletes the requirement that the Secretary of Transportation report annually to the Congress concerning the utilization of authority to lease housing for assignment to military personnel, and otherwise provide housing for members of the Coast Guard. (Subsection 4.(3) of Public Law 92–343.) (14 U.S.C. 475(e)).

(e) Deletes the requirement for annual reports by the Secretary of Transportation to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce of the Senate at the beginning of each fiscal year, concerning purchases of technical or special property for air navigation that the Secretary determines to require a substantial initial investment, or an expanded period of preparation for manufacture, and which he has negotiated without advertising (49 U.S.C. 1344(e); 84 Stat. 234).

(f) Deletes the requirement that the Secretary of Transportation include in his annual report to the Congress a detailed statement of all activities and of all expenditures and receipts in connection with his aviation war risk insurance activities (49 U.S.C. 1539; 72 Stat. 805).

(g) Deletes the requirement for reports by the Secretary of Transportation to the President and the Congress with respect to the Secretary's research and development program and demonstration program on high-speed ground transportation (49 U.S.C. 1640(a), (b); 79 Stat. 895).

(h) Deletes the requirement for annual reports by the Secretary of Transportation to the President and the Congress with respect to emergency guarantees of certificates issued by trustees of railroads undergoing reorganization, and with respect to the financial condition of the Central Railroad Company of New Jersey and of the Penn Central Transportation Company (45 U.S.C. 699; 84 Stat. 1978).

Report by the Department of the Treasury

Section 113 deletes the requirement that the Secretary of the Treasury report to Congress, no later than the last day of March of 1979 and of each succeeding year, on the financial conditions and the results of the operations of the Black Lung Disability Trust Fund during the preceding fiscal year and on the projected condition and operation of the Fund during that current fiscal year (30 U.S.C. 934a(c)(1); 92 State. 13).

Report by ACTION

Section 114 deletes the requirement that the National Voluntary Service Council submit an annual report of its findings and recommendations to the President for transmittal to the Congress with his comments and recommendations (42 U.S.C. 5045; 87 Stat. 409).

Report by the Consumer Product Safety Commission

Section 115 deletes the requirement that the Secretary of Commerce annually report to the Congress the results of various activities under the Flammable Fabrics Act (15 U.S.C. 1201(b); 81 Stat. 573). (The responsibility for implementing the Flammable Fabrics Act is now vested in the Consumer Product Safety Commission. Section 30(b), Public Law 92-573.)

Report by the Export-Import Bank

Section 116 deletes the requirement that the Eximbank submit quarterly reports of all actions taken under Public Law 90-390 which relate to use by Eximbank of the Export Expansion Facility (12 U.S.C. 635j(c); 82 Stat. 297) The Export Expansion Facility constitutes a small percentage of Eximbank authorizations. This usage would be reported as a matter of course in both the Bank's annual report and appropriate sections of the competitiveness report.

Report by the Federal Communications Commission

Section 117 deletes the requirement, under subsection 5(e) of the Communications Act of 1934, that the Federal Communications Commission submit to the Congress a report of (1) each application, renewal and transfer case for which no hearing is required and which has been pending before the Commission for three months or longer and (2) each such case which required a hearing and which has been pending for six months or longer from the final date of the hearing (47 U.S.C. 155(e); 66 Stat. 714). (The Commission is able to respond promptly to requests concerning the status of pending applications and hearing cases. More than 1,200 staff-hours annually have been required to prepare these reports.)

Report by the International Communications Agency

Section 118 eliminates an annual report now required by the U.S. Information and Educational Exchange Act of 1948, as amended (Public Law 80-402). (22 U.S.C. 1439; 62 Stat. 14) The contents of that report are to be consolidated into a simplified report under the Mutual Educational and Cultural Exchange Act of 1961, as amended (Public Law 87-256). The functions authorized by the two laws are centralized almost exclusively in the U.S. International Communication Agency; therefore, a consolidation of the provisions reduces the number of reports.

Reports by the National Aeronautics and Space Administration

Section 119(a) deletes the requirement that certain current and former employees of the National Aeronautics and Space Administration who previously or now work for an aerospace contractor which has contracts with the agency involving more than $10,000 disclose certain facts about their employment in reports to the Administrator who in turn reports to the Congress concerning those who have filed reports under this requirement (42 U.S.C. 2462(d); 83 Stat. 199).

(b) Deletes the requirement for annual reports to the Congress concerning the positions established for the National Aeronautics and Space Administration to be filled without regard to the civil service laws, and the incumbents of such positions (42 U.S.C. 2473a; 75 Stat. 791).

Report by the National Science Foundation

Section 120 deletes the requirement that the Director of the National Science Foundation report annually to the Congress on the administration and enforcement of standards promulgated by the Foundation under section 10 of Public Law 95–99 to minimize conflicts of interest (42 U.S.C. 1873a(c); 91 Stat. 834). These standards are instituted to assure that the appropriate grant or contract files of the Foundation contain a statement of any academic affiliation or any financial interest which any of the officers or employees involved may have in the institution applying for the Foundation's assistance. The standards also require identification of any conflicts of interest by peer reviewers of proposals.

Report by the Veteran Administration

Section 121 deletes a reporting requirement contained in section 4(h) of Public Law 94–123. That section provides that the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate reports, prepared by the Chief Medical Director, specifying the effect on the administration and achievement of the mission of the Department of Medicine and Surgery of the alternative courses and recommended course of action identified in reports to the Congress required of the Comptroller General and the Director of the Office of Management and Budget by sections 4(a)-(g) of Public Law 94–123 (38 U.S.C. 4118 note; 89 Stat. 673).

Report by the Office of Personnel Management

Section 122 deletes the requirement for the annual report to the President for transmittal to the Congress by the Civil Service Commission on the Commission's administration of the competitive service, the results of the incentive awards program, a report of individuals on whom the Commission has imposed a penalty for prohibited political activities, a statement on the training of employees, and an analysis of the administration and operation of employee training programs under chapter 41 of title 5 of the United States Code (5 U.S.C. 1308).

Report by the National Mediation Board

Section 123 deletes the requirement for annual reports to the Congress by the National Mediation Board (45 U.S.C. 154, 48 Stat. 1193).

TITLE II

Section 201 changes the requirement under Section 305 of the Drug Abuse Office and Treatment Act (21 U.S.C. 1165; 90 Stat. 244) from an annual to a biannual promulgation by the President of a national drug abuse strategy.

Section 202 (a) amends section 12 of the Shipping Act, 1916 (46 U.S.C. 811; 39 Stat. 732), to provide that instead of a separate annual report of activities under that Act the information be included in the annual report required under section 208 of the Merchant Marine Act, 1936.

(b) Amends section 809(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1213(a); 89 Stat. 680), to provide that the information with respect to actions taken under the Act to provide adequate U.S. flag service to each range of ports now required to be submitted in a sepaate annual report under section 809(a) shall be included in the general annual report of activities under Sec. 208 of the Merchant Marine Act, 1936.

(c) Amends section 804(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1222(e); 84 Stat. 1034), to provide that the information with respect to exemptions granted from provisions of that section prohibiting operators of foreign flag vessels from receiving operating differential subsidies, now required to be submitted in a separate annual report, shall be included in the general annual report of activities under section 208 of the Merchant Marine Act, 1936.

(d) Amends section 904(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3244(b); 88 Stat. 1165), to provide that, in lieu of a separate annual report on activities under Title IX, the information may be included in the general annual report on operations under the Act required by Section 707 of the Public Works and Economic Development Act of 1965.

(e) Amends section 204(b)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144(b)(2); 90 Stat. 2333) to provide that, in lieu of a separate annual report on loan assistance to economic development areas, the information may be included in the general annual report on operations under the Act required by section 707 of the Public Works and Economic Development Act of 1965.

(f) Amends section 112(d) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1382(d); 86 Stat. 1042) to provide that the Secretary shall include in the annual report under the Act, rather than in a separate report, the reasons for suspending any program involving the taking of marine mammals on public lands.

(g) Combines in one annual report the annual reports under sections 201, 202(c), and 302(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441; 86 Stat. 1060), (33 U.S.C. 1442(c); 86 Stat. 1061), and 16 U.S.C. 1432(d); 86 Stat. 1062), and the reports from time to time required under section 5 of the Act of March 10, 1934 (16 U.S.C. 665; 48 Stat. 402) which relates to the effects of sewage and industrial wastes on wildlife.

Reports by the Department of Defense

Section 203 (a) changes the requirement that the Chief of Engineers submit his annual report in time to accompany the annual message of the President to Congress to a requirement that the report be submitted within 9 months after the end of the fiscal year (40 U.S.C. 50).

(b) Amends 37 U.S.C. 306(f) (Public Law 87-649; 76 Stat. 466) to provide for a report to the Congress concerning special pay for officers holding positions of unusual responsibility and of a critical nature only for calendar years during which the statute is actually exercised. There have been no disbursements pursuant to this law since the end of hostilities in Vietnam.

(c) Changes the requirement under section 43(b) of the Act of August 10, 1956, as amended by Section 512 of the Military Construction Act of 1960 (Public Law 86-500) that the Director of the Office of Civil and Defense Mobilization shall report quarterly to the Committees on Armed Services of the Senate and the House of Representatives on real property transactions having an estimated value within the range of $5,000 to $50,000 (50 U.S.C. App. 2285; 70A Stat. 636) to a requirement that the Director shall report annually. The functions of the Director of the Office of Civil and Defense Mobilization under this section are now vested in the President who has delegated the responsibility to the Director of the Federal Emergency Management Agency by section 4–105 of Executive Order 12148 (July 20, 1979).

Reports from the Department of Energy

Section 204 (a) changes the requirement under section 400I(b) of Public Law 94–163 (92 Stat. 3253) that the Secretary submit annually to the Congress a detailed report of actions taken and planned under Part H of Title III of that Act to a requirement that the Secretary include such information in his annual report to the President and the Congress.

(b) Changes the requirement under section 399 of Public Law 94–163 (92 Stat. 3247) that the Secretary submit annually to the Congress a detailed report of actions taken and planned under Part G of Title III of that Act to a requirement that the Secretary include such information in his annual report to the President and the Congress.

(c) Changes the requirement under section 254 of Public Law 95–619 (42 U.S.C. 8233; 92 Stat. 3237) that the President monitor and report to Congress annually on weatherization activities to a requirement that the Secretary of the Department of Energy carry out those functions.

(d) Changes the requirement that a quarterly report be filed with the President and the Congress from accounts kept in accordance with section 6383 of Title 42 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796; 89 Stat. 960) to a requirement that a separate section containing such information be included in reports filed pursuant to section 57(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790f; 90 Stat. 1139), as added by § 142 of the Energy Conservation and Production Act (Public Law 94–385).

(e) Permits the consolidation of the report required by section 13 of Public Law 93–473 (42 U.S.C. 5562; 88 Stat. 1437) with the report required by section 657 of Public Law 95–91 (42 U.S.C. 7267; 91 Stat. 603).

(f) Permits the consolidation of the report concerning employees' financial interests required by section 308 of Public Law 95–93 (42 U.S.C. 5816a; 91 Stat. 189) with the report required by section 657 of Public Law 95–91 (42 U.S.C. 7267; 91 State. 603).

(g) Permits the consolidation of the report required by section 308 of Public Law 94–187 (42 U.S.C. 5801, note; 89 Stat. 1074) with the report required by section 204(b) of Public Law 95–238 (42 U.S.C. 7256, note; 92 Stat. 60).

(h) Changes the 6-month reporting interval under section 204(b) of Public Law 95–238 (42 U.S.C. 7256, note; 92 Stat. 60) to 1 year and consolidates the reporting requirements of that section and section 308 of Public Law 94–187 (42 U.S.C. 5878a; 89 Stat. 1074).

(i) Modifies the reporting requirement of section 421 of Public Law 94–385 (42 U.S.C. 6871; 90 Stat. 1158). The Secretary of Energy, formerly the Administrator of the Federal Energy Administration, and the Director of the Community Services Administration are required by Public Law 94–385 to submit annually through 1979 to Congress and the President a report describing the weatherization assistance program carried out under Part A, Title 5 of Public Law 94–385 or any other provision of law. The last report was due in 1979. In the future, the reporting requirement adequately can be met in the Department of Energy annual report.

(j) Modifies the requirement of section 206 of Public Law 94–385 (42 U.S.C. 6806; 92 Stat. 3134) that the Secretary annually transmit to the Congress a separate report concerning electric utility rate design initiatives to provide that the Secretary include such information in each annual report submitted under section 657 of the Department of Energy Organization Act.

(k) Amends the requirement in section 21(c) of Public Law 93–275 (15 U.S.C. 780(c); 88 Stat. 112) for the Secretary to provide a quarterly report to the Congress summarizing cases decided by the Office of Hearings and Appeals. The new requirement is that such information be submitted to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act.

(l) Amends the requirement in section 18(d) of Public Law 93–275 (15 U.S.C. 777; 90 Stat. 1130) that the Secretary of Energy provide Congress an annual report on the impact of the energy shortage and the Secretary's actions on employment and the economy, as required by such section. This report is redundant. As amended, the provision requires that such information be submitted to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Act.

Reports by the Departments of Education and Health and Human Services

Section 205 (a) requires the Secretary of Education to include a report on the status of vocational education in the country in the Secretary's annual report. (20 U.S.C. 2312(c); 90 Stat. 2187)

(b) Changes the requirement, under section 507 of the Rehabilitation Act of 1973 (29 U.S.C. 794c; 92 Stat. 2983) that the Interagency Coordinating Council submit an annual report on activities under Title V of the Act, to a requirement that the report be submitted biennially.

(c) Deletes the requirement that the Secretary of Education submit to the Congress a biennial report on the results of evaluations of programs and projects funded under section 183(g) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2833(g); 92 Stat. 2189) no later than February 1 of each biennium in order to allow consolidation of this report in the Secretary's annual evaluation report.

Reports by the Department of Housing and Urban Development

Section 206 (a) specifies that the requirement in Section 1234 of the National Housing Act (12 U.S.C. 1749bbb—10d; 84 Stat. 1790) that reports to the Congress on the National Insurance Development Program include full and complete information on operations and activities in connection with the Federal crime insurance program be met on at least a biennial basis.

(b) Changes from an annual to a biennial submission the requirement in Section 1320 of the National Flood Insurance Act of 1968

(42 U.S.C. 4027; 82 Stat. 581) that the Secretary of Housing and Urban Development report on operations under Title XIII of the National Housing Act (National Flood Insurance Program).

Reports by the Department of the Interior

Section 207 (a) deletes the requirement for an annual report on the detail of personnel and loan of equipment to the U.S. Fish and Wildlife Service (16 U.S.C. 743a; 88 Stat. 124). Reports will only be required when personnel details and equipment loans have actually been made during the year.

(b) Combines the annual report to Congress required by Section 6 of the Act of June 22, 1936 (25 U.S.C. 389e; 49 Stat. 1804) pertaining to the adjustment of irrigation charges on lands within projects on Indian Reservations, with the annual report required by 25 U.S.C. 386a (47 Stat. 564) pertaining to adjustment of reimbursable debts for irrigation project construction charges against individual Indians or tribes of Indians.

(c) Combines the annual report to Congress required by 48 U.S.C. 1428d (82 Stat. 1173) pertaining to the administration of the Guam Development Fund, with the annual report to Congress required by 48 U.S.C. 1422 (82 Stat. 844) on the transactions of the Government of Guam.

(d) Deletes the requirement to send copies of laws enacted by the legislature of the Virgin Islands to Congress (48 U.S.C. 1575(g); 68 Stat. 501) and substitutes a requirement to include a listing of such laws in the Governor's annual report to Congress required by 48 U.S.C. 1591 (68 Stat. 503).

Report by the Department of Justice

Section 208 deletes the requirement that the Attorney General, in his reports to the Congress under subsection 204(d) of the Immigration and Nationality Act (8 U.S.C. 1154(d); 79 Stat. 915), state the basis for his approval of each petition for preferential status for an immigrant by virtue of professional or occupational qualifications, and requires instead of statistical summary of such approved petitions.

Reports by the Department of State

Section 209 (a) changes the requirement of the "Fishery Conservation and Management Act 1976" (16 U.S.C. 1824(b)(4)(C); 90 Stat. 343) that the Secretary of State provide a copy of each foreign fishing application received to a requirement for a monthly summary of such applications, including a review of those applications that are approved.

(b) Changes the requirement, under Section 23(d) of the International Security Assistance Act of 1978 (22 U.S.C. 2428b(d); 82 Stat. 744) that the President submit a report 120 days prior to each phase of troop withdrawal from Korea on the viability of the withdrawal, to a requirement that a review of the viability of withdrawal be included in the annual report on Korea required by section 668 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2428; 90 Stat. 760).

(c) Changes the requirement, under Section 23(e)(2) of the International Security Assistance Act of 1978 (22 U.S.C. 2428b(e)(2); 92 Stat. 745) that the President report to the Congress on the effect of any proposed troop withdrawal from Korea prior to such withdrawal to a requirement that an assessment of the effect of any withdrawal be included in the annual report on Korea required by section 668 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2428; 90 Stat. 760).

Reports by the Department of Transportation

Section 210 (a) amends section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440(a); 84 Stat. 976) to change the date on which the Annual Report to Congress is due from "May 1" to "July 1" under the Act. The change is needed to give the Nation's railroads time to compile the various statistics and other matters required to be submitted to the Government and to enable the Federal Railroad Administration to analyze the results and prepare the report for transmittal by the President to the Congress.

(b) Changes the requirement under section 163 of the Federal-Aid Highway Act of 1973 (Public Law 93–87) (23 U.S.C. 130, note; 87 Stat. 280) from an annual to a biennial report to Congress from the Secretary of Transportation concerning railroad-highway crossing demonstration projects.

(c) Changes the requirement under Section 151(g) of Title 23, U.S.C., from September 30 to December 30 for the States to submit a report to the Secretary of Transportation and changes from January 1 to April 1 the date on which the Secretary of Transportation is to submit to Congress an annual report on the progress in the implementation and the effectiveness of the pavement marking demonstration program (Public Law 93–87; 87 Stat. 285)

(d) Changes the requirement under Section 203(e) of the Federal-Aid Highway Act of 1973 (Public Law 93–87) (23 U.S.C. 130, note; 87 Stat. 283) from September 30 to December 30 for the States' reporting date to the Secretary of Transportation and from January 1 to April 1 for the Secretary of Transportation's annual report to Congress on the progress in the implementation and the effectiveness of the railroad highway crossings program.

(e) Changes the reporting requirement under Section 311(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1861(a); 90 Stat. 358) from a semiannual to an annual report to each committee of Congress listed in subsection 1823(b) and the Councils established by subsection 1852(a) on the degree and extent of known and estimated compliance with the provisions of the Act. A specific annual reporting date of June 30 has been established to insure adequate time for data collection, assessment, report preparation, and distribution. Language expressly defining the period of report coverage has also been added.

(f) Modifies the requirement that the Secretary of Transportation each year report to appropriate committees of the Congress on agreement to provide for participation of military personnel in carrying out the functions of the Depatment and on the number, rank, and positions of members of the armed services detailed pursuant to these agreements. The change instructs the Secretary to include such information in the annual report required by section 11 of the Department of Transportation Act (49 U.S.C. 1657(d)(2); 80 Stat. 944).

(g) Deletes the requirement that the Secretaries of the Army and Transportation individually prepare annual reports on their respective administrations of Title I of the Act while changing the reporting date to allow the Administrator of the Environmental Protection Agency a more adequate period of time for report preparation. Past Coast Guard experience has shown that the present preparation period is insufficient. It is expected that the Administrator will invite and utilize input from the Secretaries of the Army and Transportation in preparing his report (33 U.S.C. 1421; 90 Stat. 725).

Report by the Export-Import Bank of the United States

Section 211 changes from semiannually to annually the frequency with which the Eximbank competitiveness report required under Section 2(b)(1)(A) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(A); 88 Stat. 2333), must be submitted to Congress. The change is proposed because of the difficulties of obtaining, analyzing and submitting relevant data and information regarding the competitiveness of Eximbank's programs at six-month intervals. The competitiveness report must include (a) a survey of other major government export financing facilities and related agencies, specifying how Eximbank's terms compare with the others in rates, terms and other conditions, (b) a survey of U.S. exporters and commercial banks to determine their perception of Eximbank's competitiveness and (c) a description of each loan for energy production, refining or transportation, assessing its impact on the availability of such products, services or energy supplies developed for use within the United States.

Most foreign export credit agencies maintain data regarding their programs on an annual basis. It is felt that greater cooperation in obtaining information regarding these programs, as well as more objective and complete comments by U.S. exporters and bankers, can be obtained if information is solicited on an annual, rather than semiannual basis.

Report by the General Services Administration

Section 212 changes the requirement of the Public Buildings Act of 1959 (40 U.S.C. 610; 73 Stat. 481) from an annual submission to the Congress showing information on each uncompleted public building being constructed, altered or acquired under the authority of the Public Buildings Act of 1959, to a submission upon request of data on projects uncompleted as of the date of the request, or as of such other date as the request may designate.

Reports by the International Communications Agency

Section 213(a) prescribes a new simplified reporting requirement for two existing annual reports. First, the U.S. International Communication Agency performs all of the functions under Public Law 80-402 (62 Stat. 14) and substantially all those under Public Law 87-256 (75 Stat. 527). Second, the new provision replaces an annually required report with a periodic report, allowing the President to report as circumstances warrant. In the appearances before congressional committees to present requests for authorizations and appropriations, adequate reporting will be made to justify replacing the annual reporting requirements with a periodic one. Third, the present law specifies details to be included in the report which are no longer considered uniformly necessary (22 U.S.C. 2458; 75 Stat. 534).

(b) The functions and authorities of the Secretary of State relating to the Center for Cultural and Technical Interchange Between East and West (the "East-West Center") were transferred to the Director of the International Communication Agency by Sections 7 and 26 of Reorganization Plan No. 2 of 1977.

This amendment replaces the requirement to report annually with a requirement to make a report and recommendations as circumstances warrant. In the appearances before congressional committees to present requests for authorizations and appropriations, adequate reporting will be made to justify replacing the annual reporting requirement by a periodic one. (22 U.S.C. 2056(c); 74 Stat. 142)

Report by the Labor Management Relations Board

Section 214 deletes the requirement that the National Labor Relations Board submit a report to Congress and to the President at the close of each fiscal year which listed cases heard, decisions rendered, and an account of all moneys it has disbursed (29 U.S.C. 153(c); 88 Stat. 1972). The subsection is amended to require an annual summary report from the Board. (This reporting requirement was amended pursuant to Public Law 93–608 to delete submission of a listing of all employees, their salaries, and duties.)

Report by the Agency for International Development

Section 215 modifies the requirement that the President submit a report to Congress not later than December 31, March 31, and June 30 of each year by eliminating the March 31 reporting date (7 U.S.C. 1736(b); 80 Stat. 1537). The report is to contain a global assessment of food production and needs and the planned programming of food assistance under Subchapter II of Chapter 41 (Agricultural Trade Development and Assistance).

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The cost estimate prepared by the Congressional Budget Office under Section 308(a) and 403 of the Congressional Budget Act of 1974 is contained in the following letter from its Director.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 21, 1980.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6686, the Congressional Reports Elimination Act of 1980, as ordered reported by the House Committee on Government Operations, July 29, 1980.

The bill would reduce the number of reports Executive agencies are required to submit to the Congress, and would also modify some remaining reporting requirements. Approximately 133 reports annually would be affected.

Based on agency estimates of the costs of preparing reports submitted to the Congress, the Congresional Budget Office has estimated the potential annual cost savings associated with this bill to be approximately $1.5 million, which could be reflected either in reduced spending or in a reallocation of resources to other activities.

In testimony before the Subcommittee on Legislation and National Security of the House Committee on Government Operations, the General Accounting Office (GAO) estimated that approximately $9 million per year would be saved if this bill were enacted. The significant difference between the estimates of GAO and CBO is primarily attributable to the fact that the GAO estimate was based upon an earlier version of the bill, which would have affected a larger number of reports. Also, based on information from GAO, it appears that the GAO estimate assumed a savings of approximately $5 million due to the elimination of the reporting requirement contained in section 123 of H.R. 6686. It appears, however, that the Office of Personnel Management and other government agencies would continue to perform most of the activities necessary for preparing this costly report, even if no report is required. Therefore, the savings resulting from this section of the bill would be minimal.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

COMMITTEE ESTIMATE OF COST

The estimate of savings by the Congressional Budget Office is $1.5 million. The committee considers this conservative and a minimum Testimony from the General Accounting Office indicated that the original bill would amount to a $9 million savings. The Office of Management and Budget suggested that this figure is a conservative one. Although the final bill reported by the full committee affects less than half the reports contained in the original bill, the savings to the Government by better utilization of employers' time and reduction of other support costs is still substantial.

INFLATIONARY IMPACT

In compliance with clause (2)(l)(4) of House Rule XI, it is the opinion of the committee that the provisions of this bill will have no inflationary impact on prices and costs in the operation of the national economy.

OVERSIGHT FINDINGS

The committee has maintained continuous oversight of the agencies affected by this legislation, but has made no detailed findings and recommendations concerning reports elimination other than those contained elsewhere in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are contained in this legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 404 OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

MISCELLANEOUS PROVISIONS

SEC. 404. (a) * * *

* * * * * * *

[(d) The head of each executive agency responsible for the disposal of foreign excess property under this title shall submit a report to Congress in January of each year or at such other time or times as he may deem desirable relative to its activities under this title, together with any appropriate recommendations.]

[(*e*)] *(d) There shall be transferred from the Department of State to each other executive agency affected by this title such records, property, personnel, obligations, commitments, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, as the Director of the Office of Management and Budget shall determine to relate to functions of such agency under this title which have heretofore been administered by the Department of State.*

SECTION 304 OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968

REPORTS TO CONGRESS

[SEC. 304. The Secretary of any department or the administration head of any agency of the executive branch of the Federal Government shall furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under the administration of this title.]

THE ACT OF MARCH 3, 1887

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-eight, and for other purposes

* * * * * * *

STEAM VESSELS, FOOD-FISHES: For new boilers and for a thorough repair and refitting of the steamer Fish Hawk, eleven thousand five hundred dollars.

[That the Commissioner of Fish and Fisheries shall submit to Congress at its next session a detailed statement of the expenditures for the fiscal year eighteen hundred and eighty-seven under all appropriations for "Propagation of food-fishes;" and annually thereafter a detailed statement of expenditures under all appropriations for "Propagation of food-fishes" shall be submitted to Congress at the beginning of each session thereof.]

* * * * * * *

SECTION 2 OF THE ACT OF JULY 31, 1947

AN ACT To provide for the disposal of materials on the public lands of the United States

* * * * * * *

SEC. 2. (a) The Secretary shall dispose of materials under this Act to the highest responsible qualified bidder after formal advertising and such other public notice as he deems appropriate: *Provided, however*, That the Secretary may authorize negotiation of a contract for the disposal of materials if—

(1) the contract is for the sale of less than two hundred fifty thousand board-feet of timber; or, if

(2) the contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local governmental agency and the public exigency will not permit the delay incident to advertising; or, if

(3) the contract is for the disposal of property for which it is impracticable to obtain competition.

[(b) A report shall be made to Congress on January 1 and July 1 of each year of the contracts made under clauses (2) and (3) of subsection (a) during the period since the date of the last report. The report shall—

[(1) name each purchaser;

[(2) furnish the appraised value of the material involved;

[(3) state the amount of each contract;

[(4) describe the circumstances leading to the determination that the contract should be entered into by negotiation instead of competitive bidding after formal advertising.]

SECTION 3 OF THE ACT OF SEPTEMBER 18, 1972

AN ACT To provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes

* * * * * * *

[SEC. 3. The Secretary of Agriculture shall, within one year after the date of this Act, provide a report to the Congress which sets forth the scope of the total national forest reforestation needs, and a planned program for reforesting such lands, including a description of the extent to which funds authorized by this Act are to be applied to the program. The Secretary shall annually thereafter make a report to the Congress on the use of funds authorized by this Act and the progress toward completion of his planned national forest reforestation program.]

SECTION 302 OF THE RURAL DEVELOPMENT ACT OF 1972

SEC. 302. SOIL, WATER AND RELATED RESOURCE DATA.—In recognition of the increasing need for soil, water, and related resource data for land conservation, use, and development, for guidance of community development for a balanced rural-urban growth, for identification of prime agriculture producing areas that should be protected, and for use in protecting the quality of the environment, the Secretary of Agriculture is directed to carry out a land inventory and monitoring program to include, but not be limited to, studies and surveys of erosion and sediment damages, flood plain identification and utilization, land use changes and trends, and degradation of the environment resulting from improper use of soil, water, and related resources. [The Secretary shall issue at not less than five-year intervals a land inventory report reflecting soil, water, and related resource conditions.]

SECTION 201 OF THE AGRICULTURAL ACT OF 1956

TITLE II—SURPLUS DISPOSAL

PROGRAM OF ORDERLY LIQUIDATION

SEC. 201. (a) The Commodity Credit Corporation shall, as rapidly as possible consistent with its existing authority, the operation of the price support program, and orderly liquidation, dispose of all stocks of agricultural commodities held by it.

[(b) The Secretary shall submit to Congress within ninety days after the enactment of this Act detailed programs, with recommendations for any additional legislation needed to carry out such programs, (1) for the disposition of surplus commodities as required by subsection (a) above; (2) for a food stamp plan or similar program for distribution through States (including the District of Columbia, the Territories, Puerto Rico and the Virgin Islands) and local units of Government of future surplus production to needy persons in the United States, its Territories, and possessions, so as to prevent the accumulation of commodities in the hands of the Commodity Credit Corporation; and (3) for strategic stockpiling foodstuffs and other agricultural products (A) inside the United States and (B) outside the United States as authorized in section 415 of the Mutual Security Act of 1954. The Secretary shall report annually on his operations under subsection (a) and such reports shall show—

[(1) the quantities of surplus commodities on hand;

[(2) the methods of disposition utilized and the quantities disposed of during the preceding twelve months;

[(3) the methods of disposition to be utilized and the estimated quantities that can be disposed of during the succeeding twelve months;

[(4) a detailed program for the expansion of markets for surplus agricultural commodities through marketing and utilization research and improvement of marketing facilities; and

[(5) recommendations for additional legislation necessary to accomplish the purposes of this section.]

AGRICULTURAL ACT OF 1970

* * * * * * *

[SEC. 609. The Secretary shall file annually with the President for transmission to the Congress a complete report of the programs carried out under this title. Such report shall include the amount of funds spent, the purposes for which such funds were spent, the basis for participation in such programs in the various States, and an appraisal of the effectiveness of the programs.]

SECTION 602 OF THE ACT OF AUGUST 28, 1954

AN ACT to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes

* * * * * * *

SEC. 602. (a) * * *

* * * * * * *

(f) Effective October 1, 1976, the Secretary of Agriculture is authorized to provide appropriate orientation and language training to families of officers and employees of the Department of Agriculture in anticipation of an assignment abroad of such officers and employees or while abroad pursuant to this Act or other authority: *Provided*, That the facilities of the Foreign Service Institute or other Government facilities shall be used wherever practicable, and the Secretary may utilize foreign currencies generated under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, to carry out the purposes of this subsection in the foreign nations to which such officers, employees, and families are assigned. There are hereby authorized to be appropriated such sums, not to exceed $50,000 annually, as may be necessary to carry out the purposes of this subsection: *Provided*, That for the fiscal year ending September 30, 1977, any appropriations available to the Secretary of Agriculture (not to exceed $50,000) may be used to carry out the purposes of this subsection. [The Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry not later than ninety days after the end of each fiscal year a detailed report showing activities carried out under the authority of this subsection during such fiscal year.]

Section 13 of the Commodity Credit Corporation Charter Act

Sec. 13. Records; Annual Report.—The Corporation shall at all times maintain complete and accurate books of account [and shall file annually with the Secretary of Agriculture a complete report as to the business of the Corporation, a copy of which shall be forwarded by the Secretary of Agriculture to the President for transmission to the Congress].

Section 11 of the Emergency Livestock Credit Act of 1974

[Sec. 11. The Secretary shall, not later than December 15 of each year, report to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry on the effectiveness of this Act. The Secretary shall be required, but not limited, to include in such report the number of loan applications submitted, the number and amount of loans approved, the financial situation facing cattlemen at the time of the report, the effect of this Act on the retail marketing of beef and on the farm-retail price spread of beef, and any recommendations he may have as to actions which can be taken to further decrease the price spread and to increase the consumption of beef.]

Merchant Marine Act, 1936

Sec. 213. The Commission shall make studies of and make reports to Congress on—

(a) * * *

* * * * * * *

[(c) The relative cost of construction or reconditioning of comparable ocean vessels in shipyards in the various coastal districts of the United States, together with recommendations as to how such shipyards may compete for work on an equalized basis; reports under this paragraph shall be made annually on the first day of October of each year.]

* * * * * * *

Sec. 804. (a) * * *

* * * * * * *

(e) During the period of time provided for in subsection (c) of this section, the Secretary of Commerce [shall, at the beginning of each regular session, make a report to the Congress] *shall include in the annual report pursuant to section 208 of this Act, a report* on the activities of contractors under such subsection, including but not limited to, the nature and extent of such activities; its effect, if any, upon carrying forward the national policy declared in section 101 of this Act; and the Secretary's recommendations for legislation, if such is deemed to be necessary.

* * * * * * *

SEC. 809. (a) Contracts under this Act shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, not less than 10 percent of the funds appropriated for construction-differential subsidy and operating-differential subsidy pursuant to this Act or any law authorizing funds for the purposes of this Act shall be allocated to each such port range: *Provided, however*, That such allocation shall apply to the extent that subsidy contracts are approved by the Secretary of Commerce. [Not later than March 1, 1976, and annually thereafter, the Secretary shall submit to Congress] *The Secretary shall include in the annual report pursuant to section 208 of this Act* a detailed report (1) describing the actions that have been taken pursuant to this Act to assure insofar as possible that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section; and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

Section 13 of the Merchant Ship Sales Act of 1946

[REPORTS

[SEC. 13. The Commission shall on July 1, 1946, and every three months thereafter, make a repot to Congress with respect to all activities or transactions under this Act which have not been covered by any previous such report.]

Fish and Wildlife Act of 1956

INVESTIGATIONS, INFORMATION, REPORTS

SEC. 5. (a) The Secretary shall conduct continuing investigations [, prepare and disseminate information, and make periodical reports to the public, to the President, and to Congress,] *and prepare and disseminate information* with respect to the following matters:

(1) * * *

* * * * * * *

[REPORTS ON ACTIVITIES AND IMPORTS

[SEC. 9. (a) The Secretary of the Interior shall make an annual report to the Congress with respect to activities of the United States Fish and Wildlife Service under this Act, and shall make such recommendations for additional legislation as he deems necessary.]

* * * * * * *

THE FIRST SECTION OF THE ACT OF JUNE 16, 1948

AN ACT to provide safety in aviation and to direct a study of the causes and characteristics of thunderstorms and other atmospheric disturbances

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Chief of the Weather Bureau is authorized and directed to study fully and thoroughly the internal structure of thunderstorms, hurricanes, cyclones, and other severe atmospheric disturbances, particularly the degree of turbulence within such storms and the development, maintenance, and magnitude of updrafts and downdrafts with a view to establishing methods by which the characteristics of particular thunderstorms may be forecast and methods by which the characteristics of such storms may be determined on visual observation from outside of the immediate thunderstorm area. Such study shall be concluded at the earliest practicable date and a final report submitted to Congress. **[**The Chief of the Weather Bureau shall make interim reports to Congress at least annually during the course of the study.**]**

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TITLE 10, UNITED STATES CODE

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§ 1124. Cash awards for suggestions, inventions, or scientific achievements

(a) * * *

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy. **[**The Secretary of Defense and the Secretary of Transportation shall send to the President annually for transmittal to Congress a progress report, with appropriate recommendations, on the awards program.**]**

* * * * * * *

§ 2110. Logistical support

(a) * * *

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(b) The Secretary of the military department concerned may provide, or contract with civilian flying or aviation schools or educational institutions to provide, the personnel, aircraft, supplies, facilities, services, and instruction necessary for flight instruction and orientation for properly designated members of the program. **[**The Secretary of each military department shall report to Congress in April of each year on the progress of the flight instruction program.**]**

* * * * * * *

§ 2390. Suggestions for improving procurement policies

(a) The Secretary of Defense shall request each commissioned officer, and each civilian employee above grade GS–12, who is scheduled for retirement and who is, or was at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, including suggestions for improving competitive bidding procedures and for reducing or eliminating any inequities that may exist. Such request shall be made of each such commissioned officer or employee not less than 30 days preceding his release from active duty or his separation. Submission of suggestions shall be at the option of each such commissioned officer or employee, and each such officer or employee shall be allowed reasonable time during working hours to prepare such suggestions, if such officer or employee chooses to make suggestions under this section.

[(b) The Secretary of Defense shall submit a semiannual report to the Committees on Armed Services of the Senate and House of Representatives containing a copy of each suggestion submitted under subsection (a) during the preceding six-month period and the response of the Department of Defense to each such suggestion.]

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SECTION 5 OF THE DEFENSE OVERSEAS TEACHERS PAY AND PERSONNEL PRACTICES ACT

ADMINISTRATION

SEC. 5. (a) * * *

* * * * * * *

[(c) The Secretary of each military department shall fix the rates of basic compensation of teachers and teaching positions in his military department in relation to the rates of basic compensation for similar positions in the United States but no such rate of basic compensation so fixed shall exceed the highest rate of basic compensation for similar positions of a comparable level of duties and responsibilities under the municipal government of the District of Columbia.]

* * * * * * *

SECTION 7 OF THE ACT OF MARCH 3, 1899

AN ACT making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes

[SEC. 7. That the Secretary of War shall cause the Chief of Engineers of the United States Army, in submitting his annual reports to Congress with regard to works of river and harbor improvement under his charge, to state what deterioration, if any, has taken place by destruction, decay, obstructions, or otherwise, in connection with any of such works, together with an estimate of the cost of rebuilding, or repairing such works, or removing such obstructions; and he shall also cause the said Chief of Engineers to recommend, with his reasons therefor, the discontinuance of appropriations for any river and harbor work which he may deem unworthy of further improvement.]

Section 7 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976

SEC. 7, DEMONSTRATIONS.

(a) * * *

* * * * * * *

(c)(1) * * *

[(4) If the Administrator determines on the basis of his annual review of the program under this Act that—

[(A) at least 200 vehicles cannot be added to the project during the fiscal year 1978, or

[(B) at least 600 vehicles cannot be added to the project during the fiscal year 1979, or

[(C) at least 1,700 vehicles cannot be added to the project during the fiscal year 1980, or

[(D) at least 7,500 vehicles in the aggregate cannot be added to the project during the fiscal years 1981 through 1984,

he shall immediately forward a detailed explanation thereof to the Speaker of the House of Representatives, the President of the Senate, the Committee on Science and Technology of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate.]

* * * * * * *

SEC. 14. ANNUAL REPORT.

[The Administrator shall submit to the Congress annually a report on all activities being ~~undertaken or carried~~ out pursuant to the provisions of this Act, including—

[(1) such projections and estimates as may be necessary to evaluate the progress of the project and to indicate the extent to which, and the pace at which, the objectives of this Act are being achieved; and

[(2) a statement of the extent to which imported automobile chassis or components are being used, or are desirable, for the production of vehicles under section 7, and of the extent to which restrictions imposed by law or regulation upon the importation or use of such chassis or components are impeding the achievement of the purposes of this Act.

[Each such report shall also include any recommendations which the Administrator may deem appropriate for legislation or related action which might further the purposes of this Act.]

Energy Conservation and Production Act

* * * * * * *

REPORTS

Sec. 206. [Not later than the last day in December in each year, the Secretary shall transmit to the Congress a report] *The Secretary shall include in each annual report submitted under section 657 of* *the Department of Engery Organization Act a statement* with respect to activities conducted under this title and recommendations as to the need for and types of further Federal legislation.

* * * * * * *

ANNUAL REPORT

[SEC. 421. The Administrator and (with respect to the operation and effectiveness of activities carried out through community action agencies) the Director shall each submit, on or before March 31, 1977, and annually thereafter through 1979, a report to the Congress and the President describing the weatherization assistance program carried out under this part or any other provision of law, including the results of the periodic evaluations and monitoring activities required by section 416.]

SEC. 421. The Secretary of Energy shall include in his annual report information describing the weatherization assistance program carried out under this part or any other provision of law including the results of the periodic evaluations and monitoring activities required by section 416.

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ENERGY POLICY AND CONSERVATION ACT

GENERAL PROVISIONS

SEC. 365. (a) * * *

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[(c) The Secretary shall report annually to the President and the Congress, and shall furnish copies of such report to the Governor of each State, on the operation of the program under this part. Such report shall include an estimate of the energy conservation achieved, the degree of State participation and achievement, a description of innovative conservation programs undertaken by individual States, and the recommendations of the Secretary, if any, for additional legislation.]

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ADMINISTRATION; ANNUAL REPORTS

SEC. 399. (a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall, [within one year after the date of the enactment of this part and annually thereafter while funds are available under this part, submit to the Congress a detailed report of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such report shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.**]** *include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.*

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ADMINISTRATION; ANNUAL REPORTS

SEC. 400I. (a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall, **[**within one year after the date of the enactment of this part and annually thereafter while funds are available under this part, submit to the Congress a detailed report of the actions taken under this part in ~~the preceding fiscal~~ year and the actions planned to be taken in the subsequent fiscal year. Such report shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out, with funds allocated, and an estimate of the energy savings, if any, achieved.**]** *include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out with funds allocated, and an estimate of the energy savings, of any, achieved.*

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DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATION

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TITLE II—GENERAL PROVISIONS

*　　*　　*　　*　　*　　*　　*

SEC. 204. (a) In carrying out the programs for which funds are authorized by this Act, the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

[(b) At least once every six months, or upon request, the Secretary of Energy shall submit to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding six months, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program and indicating the steps currently being taken to assure such participation in the future.**]**

(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a

full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicatng the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).

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TITLE III—AUTOMOTIVE PROPULSION RESEARCH AND DEVELOPMENT

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REPORTS

SEC. 310. **[**(a) As a separate part of the annual report submitted under section 15(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 with respect to the comprehensive plan and program then in effect under section 6 (a) and (b) of such Act, the Secretary of Energy shall submit to Congress an annual report of activities under this title. Such report shall include—

[(1) a current comprehensive program definition for implementing this title;

[(2) an evaluation of the state of automobile propulsion system research and development in the United States;

[(3) the number and amount of contracts and grants made under this title;

[(4) an analysis of the progress made in developing advanced automobile propulsion system technology; and

[(5) suggestions for improvements in advanced automobile propulsion system research and development, including recommendations for legislation.**]**

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FEDERAL NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT ACT OF 1974

LOAN GUARANTEES FOR ALTERNATIVE FUEL DEMONSTRATION FACILITIES

SEC. 19. (a). * * *

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[(d) Prior to submitting a report to Congress pursuant to subsection (m) of this section on each guarantee and cooperative agreement, the Administrator shall request from the Attorney General and the Chairman of the Federal Trade Commission written views, comments, and recommendations concerning the impact of such guarantee or commitment or agreement on competition and concentration in the production of energy and give due consideration to views, comments, and recommendations recived: *Provided*, That if either official, within sixty days after receipt of such request or at any time prior to the Administrator submitting such report to Congress, recommends against making such guarantee or commitment or agreement, the proposed guarantee or commitment or agreement shall be referred to the President, and the Administrator shall not do so unless the President determines in writing that such guarantee or commitment or agreement is in the national interest.]

* * * * * * *

[(l)(1) The Administrator is directed to submit a report to the Congress within one hundred and eighty days after the enactment of this section setting forth his recommendations on the best opportunities to implement a program of Federal financial assistance with the objective of demonstrating production and conservation of energy. Such report shall be updated and submitted to Congress at least annually and shall include specific comments and recommendations by the Secretary of the Treasury on the methods and procedures set forth in subparagraph (B)(viii) of this subsection, including their adequacy, and changes necessary to satisfy the objectives stated in this subsection. This report shall include—

[(A) a study of the purchase or commitment to purchase by the Federal Government, for the use by the United States, of all or a portion of the products of any alternative fuel facilities constructed pursuant to this program as a direct or an alternate form of Federal assistance, which assistance, if recommended, shall be carried out pursuant to section 7(a)(4) of this Act; and

[(B) a comprehensive plan and program to acquire information and evaluate the environmental, economic, social, and technological impacts of the demonstration program under this section. In preparing such a comprehensive plan and program, the Administrator shall consult with the Environmental Protection Agency, the Federal Energy Administration, the Department of Housing and Urban Development, the Department of the Interior, the Department of Agriculture, and the Department of the Treasury, and shall include therein, but not be limited to, the following:

[(i) information about potential demonstration facilities proposed in the program under this section;

[(ii) any significant adverse impacts which may result from any activity included in the program;

[(iii) the extent to which it is feasible to commercialize the technologies as they affect different regions of the Nation;

[(iv) proposed regulations required to carry out the purposes of this section;

[(v) a list of Federal agencies, governmental entities, and other persons that will be consulted or utilized to implement the program;

[(vi) the methods and procedures by which the information gathered under the program will be analyzed and disseminated;

[(vii) a plan for the study and monitoring of the health effects of such facilities on workers and other persons, including, but not limited to, any carcinogenic effect of alternative fuels; and [(viii) the methods and procedures to insure that (I) the use of the Federal assistance for demonstration facilities is kept to the minimum level necessary for the information objectives of this section, (II) the impact of loan guarantees on the capital markets of the United States is minimized, taking into account other Federal direct and indirect securities activities, and any economic sectors which may be negatively impacted as a result of the reduction of capital by the placement of guaranteed loans, and (III) the granting of Federal loan guarantees under this Act does not impede movement toward improvement in the climate for attracting private captital to develop alternative fuels without continued direct Federal incentives.

[(2) The Administrator shall annually submit a detailed report to the Congress concerning—

[(A) the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including, but not be limited to (i) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility, including byproduct production therefrom, and the distribution of such products and byproducts, (ii) a detailed statement of the financial conditions of each such demonstration facility, (iii) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (iv) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (v) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section; and

[(B) the activities of the fund referred to in subsection (n) of this section during the preceding fiscal year, including a statement of the amount and source of fees or other moneys, property, or assets deposited into the funds, all payments made, the notes or other obligations issued by the Administrator, and such other data as may be appropriate.

[(3) The annual reports required by this subsection shall be a part of the annual report required by section 15 of this Act, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports and the one-hundred-and-eighty-day report required in paragraph (1) of this subsection shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science and Technology and to the President of the Senate and the Committee on Energy and Natural Resources of the Senate.]

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FINANCIAL SUPPORT PROGRAM FOR MUNICIPAL WASTE REPROCESSING DEMONSTRATION FACILITIES

SEC. 20. (a) * * *

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(d)(1) The Administrator shall establish such guidelines as he deems necessary for purposes of obtaining pertinent information from municipalities receiving funding under this section. These guidelines shall include but not be limited to methods of assessment and evaluation of projects authorized under this section. Such assessments and evaluations shall be presented by the Administrator to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources upon the request of either such committee.

[(2) The Administrator shall annually submit a report to the Congress concerning the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including but not limited to (A) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility including byproduct production therefrom, and the distribution of such products and byproducts, (B) a statement of the financial condition of each such demonstration facility, (C) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (D) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (E) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section.

[(3) The annual reports required by this subsection shall be a part of the annual report required by section 15 of this Act, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science and Technology and to the President of the Senate and the Senate Committee on Energy and Natural Resources.**]**

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SECTION 12 OF THE SOLAR HEATING AND COOLING DEMONSTRATION ACT OF 1974

DISSEMINATION OF INFORMATION AND OTHER ACTIONS TO PROMOTE PRACTICAL USE OF SOLAR HEATING AND COOLING TECHNOLOGIES

SEC. 12. (a) * * *

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[(d) Each Federal officer and agency having functions under this Act shall include in his or its annual report to the President and the

Congress a full and complete description of his or its activities (current and projected) under this Act, along with his or its recommendations for legislative, administrative, or other action to improve the programs under this Act or to achieve the objectives of this Act more promptly and effectively. In addition, the Secretary shall submit annually to the President and the Congress a special report summarizing in appropriate detail all of the activities (current and projected) of the various Federal officers and agencies having functions under this Act, with the objective of presenting a comprehensive overall view of such programs.]

GENERAL EDUCATION PROVISIONS ACT

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PART A—EDUCATION DIVISION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

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THE OFFICE OF EDUCATION

SEC. 403. (a) * * *

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(c)(1) The Office shall, consistent with such organization thereof which is provided by law, be divided into bureaus, and such bureaus shall be divided into divisions as the Commissioner determines appropriate.

(2)(A) There shall be regional offices of the Office established in such places as the Commissioner, after consultation with the Assistant Secretary, shall determine. Such regional offices shall carry out such functions as are specified in subparagraph (B).

(B) The regional offices shall serve as centers for the dissemination of information about the activities of the agencies in the Education Division and provide technical assistance to State and local educational agencies, institutions of higher education, and other educational agencies, institutions, and organizations and to individuals and other groups having an interest in Federal education activities.

(C) The Commissioner shall not delegate to any employee in any regional office any function which was not carried out, in accordance with regulations effective prior to June 1, 1973, by employees in such offices unless the delegation of such function to employees in regional offices is expressly authorized by law enacted after the enactment of the Education Amendments of 1974.

[(3) The Commissioner shall submit to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives not later than February 1 of each year a report on the personnel needs and assignments of the Office. Such report shall include a description (A) of the manner in which the Office is organized and the personnel of the Office are assigned to the various functions of that agency and (B) of personnel needs of that agency in order to enable it to carry out its functions, as authorized by law.]

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Part B—Appropriations and Evaluations

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Subpart 2—Planning and Evaluation of Federal Education Activities

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[RENEWAL EVALUATION REPORTS

[Sec. 418. (a) In the case of any applicable program for which—

[(1) the authorization of appropriations expires; or

[(2) the time during which payments or grants are to be made expires:

not later than one year prior to the date of such expiration, the Assistant Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate a comprehensive evaluation report on such program.

[(b) Any comprehensive evaluation report submitted pursuant to subsection (a) shall contain—

[(1) a history of the program concerned, including—

[(A) a history of authorizations of appropriations, budget requests, appropriations, and expenditures for such programs;

[(B) a history of legislative recommendations with respect to such program made by the President and the disposition of such recommendations; and

[(C) a history of legislative changes made in applicable statutes with respect to such program;

[(2) assuming a continuation of such program, recommendations for improvements (including legislative changes and funding levels) in such program with a view toward achieving the legislative purposes of such program;

[(3) a compilation and summary of all evaluations of such program; and

[(4) a recommendation with respect to whether such program should be continued, and the date of its expiration, and the reasons for such recommendations.]

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Part C—General Requirements and Conditions Concerning the Operation and Administration of Education Programs; General Authority of the Commissioner of Education

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Subpart 1—General Authority

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[CATALOG OF FEDERAL EDUCATION ASSISTANCE PROGRAMS

[Sec. 423. The Commissioner shall prepare and make available in such form as he deems appropriate a catalog of all Federal education assistance programs whether or not such programs are administered by him. The catalog shall—

[(1) identify each such program, and include the name of the program, the authorizing statute, the specific Federal administering officials, and a brief description of such program;

[(2) set forth the availability of benefits and eligibility restrictions in each such program;

[(3) set forth the budget requests for each such program, past appropriations, obligations incurred, and pertinent financial information indicating (A) the size of each such program for selected fiscal years, and (B) any funds remaining available;

[(4) set forth the prerequisites, including the cost to the recipient of receiving assistance under each such program, and any duties required of the recipient after receiving benefits;

[(5) identify appropriate officials, in Washington, District of Columbia, as well as in each State and locality (if applicable), to whom application or reference for information for each such program may be made;

[(6) set forth the application procedures;

[(7) contain a detailed index designed to assist the potential beneficiary in identifying all education assistance programs related to a particular need or category of potential beneficiaries;

[(8) contain such other program information and data as the Commissioner deems necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal education assistance program; and

[(9) be transmitted to Congress with the Commissioner's annual report.]

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HIGHER EDUCATION ACT OF 1965

TITLE I—COMMUNITY SERVICE AND CONTINUING EDUCATION PROGRAMS

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PART B—LIFELONG LEARNING

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[REPORTS

[SEC. 134. The Assistant Secretary shall transmit to the President and to the Congress a report on such results from the activities conducted pursuant to this part as may be completed by January 1, 1978, together with such legislative recommendations as he may deem appropriate. The Assistant Secretary shall similarly report annually thereafter.]

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TITLE IX—GRADUATE PROGRAMS

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PART E—ANNUAL FELLOWSHIP REPORT

[REPORT ON GRADUATE FELLOWSHIPS AND ASSISTANCE

[SEC. 971. (a) Within one hundred and twenty days after the end of each fiscal year during which grants or fellowships are awarded under the provisions of this title the Commissioner shall prepare and submit to the Congress a report which—

[(1) specifies the authority for and amount of each grant or fellowship so awarded;

[(2) identifies the institutions which received such grants; and

[(3) identifies the institutions which students receiving such fellowships attended.

[(b) Each report required by this section shall contain an evaluation which—

[(1) examines the extent to which grants or fellowships awarded under this title emphasized studies relating to—

[(A) innovation in the field of graduate education;

[(B) emerging fields of knowledge;

[(C) areas of overriding national concern; or

[(D) the education and employment of personnel in areas which the Commissioner finds to be of special need; and

[(2) examines the extent to which grants and fellowships awarded under this title made substantial progress toward achieving the purpose of the various parts of this title under which they were awarded.]

PART F—GENERAL ASSISTANCE TO GRADUATE SCHOOLS

GENERAL ASSISTANCE GRANTS

SEC. 981. (a) * * *

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[(f) The Commissioner shall report to Congress not later than 120 days after the end of each fiscal year regarding the effectiveness of assistance under this section in achieving the goals and objectives of institutions of higher education and in encouraging diversity and autonomy among such institutions of higher education. The Commissioner, in such report, shall include such recommendations as may be appropriate regarding the continuation, modification, or extension of assistance under this section.]

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VOCATIONAL EDUCATION ACT OF 1963

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TITLE I—VOCATIONAL EDUCATION

PART A—STATE VOCATIONAL EDUCATION PROGRAMS

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SUBPART 1—GENERAL PROVISIONS

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FEDERAL AND STATE EVALUATIONS

SEC. 112. (a) * * *

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(c) [The Commissioner shall prepare and submit annually to the Congress, within nine months of the termination of each fiscal year, a report on the status of vocational education in the country during that fiscal year.] *The Commissioner shall include in the Commissioner's annual report a report on the status of vocational education in the country.* This report shall include data on the information elements developed in the national vocational education data reporting and accounting system and an analysis of such data, and a summary of the findings of the reviews and audits required by paragraph (2) of subsection (a) and of the evaluations performed pursuant to paragraphs (1) and (2) of subsection (b).

PART B—NATIONAL PROGRAMS

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Subpart 3—Bilingual Vocational Training

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GENERAL RESPONSIBILITIES OF THE COMMISSIONER

SEC. 182. (a) The Commissioner and the Secretary of Labor together shall—

(1) develop and disseminate accurate information on the status of bilingual vocational training in all parts of the United States; *and*

(2) evaluate the impact of such bilingual vocational training on the shortages of well-trained personnel, the unemployment or underemployment of persons with limited English-speaking ability, and the ability of such persons to acquire sufficient job skills and English language skills to contribute fully to the economy of the United States[; and].

[(3) report their findings annually to the President and the Congress.]

* * * * * * *

SECTION 653 OF THE EDUCATION OF THE HANDICAPPED ACT

SEC. 653. (a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in such agreements. Any such agreement shall—

(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

[(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress.**]**

Section 308 of the Age Discrimination Act of 1975

[Reports

[Sec. 308. (a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health, Education, and Welfare a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 303; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 303.

[(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health, Education, and Welfare shall compile the reports made pursuant to subsection (a) and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 303.]

Section 231 of the Community Health Centers Act

RAPE PREVENTION AND CONTROL

Sec. 231. **[2689q]** (a) The Secretary shall establish within the National Institute of Mental Health an identifiable administrative unit to be known as the National Center for the Prevention and

Control of Rape (hereinafter in this section referred to as the "Center").

(b)(1) The Secretary, acting through the Center, may, directly or by grant, carry out the following:

(A) * * *

(B) The compilation, analysis, and publication of summaries of the continuing study conducted under subparagraph (A) and the research and demonstration projects conducted under subparagraph (E). [The Secretary shall annually submit to the Congress a summary of such study and projects together with recommendations where appropriate.]

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SECTION 511 OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

REPORTS

SEC. 511. (a) * * *

[(b) Within one hundred and twenty days following the convening of each session of Congress, the Secretary of Health, Education, and Welfare shall submit through the President to the Congress and to the Office of Science and Technology an annual report upon the health matters covered by this Act, including the progress toward the achievement of the health purposes of this Act, the needs and requirements in the field of coal or other mine health, a description and the anticipated cost of each project and program he has undertaken under sections 301(b) and 501, and any other relevant information, including any recommendations he deems appropriate. The first such report shall include the recommendations of the Secretary of Health, Education, and Welfare as to necessary mandatory health standards, including his recommendations as to the maximum permissible individual exposure to miners from respirable dust during a shift.]

SECTION 27 OF THE TOXIC SUBSTANCES CONTROL ACT

SEC. 27. DEVELOPMENT AND EVALUATION OF TEST METHODS.

(a) IN GENERAL.—The Secretary of Health, Education, and Welfare in consultation with the Administrator and acting through the Assistant Secretary for Health, may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities for, projects for the development and evaluation of inexpensive and efficient methods (1) for determining and evaluating the health and environmental effects of chemical substances and mixtures, and their toxicity, persistence, and other characteristics which affect health and the environment, and (2) which may be used for the development of test data to meet the requirements of rules promulgated under section 4. The Administrator shall consider such methods in prescribing under section 4 standards for the development of test data.

(b) APPROVAL BY SECRETARY.—No grant may be made or contract entered into under subsection (a) unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require. The Secretary may apply such conditions to grants and contracts under subsection (a) as the Secretary determines are necessary to carry out the purposes of such subsection. Contracts may be entered into under such subsection without regard to sections 3648 and 3709 of the Revised Statute (31 U.S.C. 529; 41 U.S.C. 5).

[(c) ANNUAL REPORTS.—(1) The Secretary shall prepare and submit to the President and the Congress on or before January 1 of each year a report of the number of grants made and contracts entered into under this section and the results of such grants and contracts.]

[(2)] *(c)* The Secretary shall periodically publish in the Federal Register reports describing the progress and results of any contract entered into or grant made under this section.

SOCIAL SECURITY ACT

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TITLE XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW

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PART A—GENERAL PROVISIONS

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APPOINTMENT OF ADVISORY COUNCIL AND OTHER ADVISORY GROUPS

SEC. 1114. (a) * * *

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(f) The Secretary may also appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this Act. [The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.]

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TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

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PART C—MISCELLANEOUS PROVISIONS

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MEDICARE COVERAGE FOR END STAGE RENAL DISEASE PATIENTS

SEC. 1881. (a) * * *

*   *   *   *   *   *   *

(c)(1) * * *

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(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. [The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.]

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SECTION 502 OF THE MARIHUANA AND HEALTH REPORTING ACT

[HEALTH-RESEARCH REPORTS

[SEC. 502. The Secretary of Health, Education, and Welfare, after consultation with the Surgeon General and other appropriate individuals, shall transmit a report to the Congress on or before January 31, 1971, and biennially thereafter (1) containing current information on the health consequences of using marihuana, and (2) containing such recommendations for legislative and administrative action as he may deem appropriate. A preliminary report shall be transmitted to the Congress by the Secretary concerning current information on the health consequences of using marihuana not later than ninety (90) days after the date of enactment of this title.]

ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

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TITLE I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

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PART D—FEDERAL ADMINISTRATION OF PROGRAMS AND PROJECTS

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PROGRAM EVALUATION

SEC. 183. (a) * * *

*   *   *   *   *   *   *

(g) Report to Congress.—The Commissioner shall make a report to the respective committees of the Congress having legislative jurisdiction over programs authorized by this title and the respective Committees on Appropriations [no later than February 1, 1980, 1982, and 1984] concerning the results of evaluations of programs and projects required under this section, which shall be comprehensive and detailed, as up-to-date as possible, and based to the maximum extent possible on objective measurements, together with other related findings and evaluations and his recommendations with respect to legislation.

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TITLE VII—BILINGUAL EDUCATION PROGRAMS

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Part A—Financial Assistance for Bilingual Education

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TRAINING

Sec. 723. (a)(1) * * *

(2) In addition the Commissioner is authorized to award fellowships for study in the field of training teachers for bilingual education. For the fiscal year ending June 30, 1975, not less than 100 fellowships leading to a graduate degree shall be awarded under the preceding sentence for preparing individuals to train teachers for programs of bilingual education. Such fellowships shall be awarded in proportion to the need for teachers of various groups of individuals with limited English proficiency. [For each fiscal year after June 30, 1975, and prior to October 1, 1983, the Commissioner shall report to the Committee on Education and Labor of the House of Representatives and the Committee on Human Resources of the Senate on the number of fellowships in the field of training teachers for bilingual education which he recommends will be necessary for that fiscal year.]

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Public Health Service Act

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TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

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Part D—Primary Health Care

Subpart I—Primary Health Centers

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COMMUNITY HEALTH CENTERS

SEC. 330. (a) * * *

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(e)(1) * * *

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(5) The Secretary, in making a grant under this section to a community health center for the provision of environmental health services described in subsection (a)(4), may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source. **[**The Secretary shall annually notify the appropriate committees of Congress of the amounts so expended and the improvements for which they were spent.**]**

* * * * * * *

SECTION 254 OF THE NATIONAL ENERGY CONSERVATION POLICY ACT

SEC. 254. WEATHERIZATION STUDY.

The **[**President**]** *Secretary* shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken, independently of this Act and such amendments. The **[**President**]** *Secretary* shall report to the Congress within one year from the date of enactment of this Act, and annually thereafter, concerning—

(1) the extent of progress being made through weatherization activities toward the achievement of national energy conservation goals;

(2) adequacy and costs of materials necessary for weatherization activities; and

(3) the need for and desirability of modifying weatherization activities authorized by this Act, and amendments made thereby and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.

FEDERAL ENERGY ADMINISTRATION ACT OF 1974

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PART A—FEDERAL ENERGY ADMINISTRATION

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ECONOMIC ANALYSIS OF PROPOSED ACTIONS

SEC. 18. (a) * * *

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(d) The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and [shall provide the Congress with an annual report] *shall submit to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act a statement* on the impact of the energy shortage and the Administrator's actions on employment and the economy. Such [report] *statement* shall contain recommendations as to whether additional Federal programs of employment and economic assistance should be put into effect to minimize the impact of the energy shortage and any actions taken.

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OFFICE OF PRIVATE GRIEVANCES AND REDRESS

SEC. 21. (a) * * *

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(c) The Administrator shall [report quarterly to the Congress] *submit to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act a statement* on the nature and number of the grievances which have been filed, and the action taken and relief provided, pursuant to this section; and he shall make recommendations to the Congress from time to time concerning legislative or administrative actions which may be taken to better assist persons adversely affected by the energy shortages and to distribute more equitably the burdens resulting from any measures adopted, or actions taken, by him.

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NATIONAL HOUSING ACT

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TITLE II—MORTGAGE INSURANCE

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CO-INSURANCE

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SEC. 244. (a) * * *

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[(f) The Secretary shall submit to the Congress a report, not later than March 1, 1975, and annually thereafter, describing operations under this section, including the extent of mortgagee participation and any special problems encountered, particularly with respect to the flow of mortgage credit to older and declining neighborhoods and to purchasers of older and lower cost housing, and setting forth any recommendations he may deem appropriate with respect to the continuation or modification of the authority contained in this section. If the Secretary shall fail to submit any such report by the date due, his authority under this section shall terminate.**]**

[(g)**]**(*f*)(1) Where the mortgagee is a public housing agency or an insured depository institution and the mortgage covers a multifamily housing project, the co-insurance contract may provide that the mortgagee assume (i) the full amount of any loss on the insured mortgage up to an amount equal to a fixed percentage of the outstanding principal balance of the mortgage at the time of claim for insurance benefits, or (ii) the full amount of any losses on insured mortgages in a portfolio of mortgages approved by the Secretary up to an amount equal to a fixed percentage of the outstanding principal balance of all mortgages in such portfolio at the time of claim for insurance benefits on a mortgage in the portfolio, plus a share of any loss in excess of the amount under clause (i) or (ii), whichever is applicable.

(2) The second sentence of subsection (d) shall not apply to mortgages made to public housing agencies, but for purposes of such second sentence such mortgages shall not be counted in the aggregate principal amount of all mortgages insured under this title.

(3) The Secretary may make loans, from the applicable insurance fund, to public housing agencies in connection with mortgages which have been insured pursuant to this subsection and which are in default.

(4) The Secretary may insure and make a commitment to insure in connection with a co-insurance contract pursuant to this subsection (A) a mortgage on a project assisted under the second proviso in the first sentence of section 236(b) of this Act, and (B) a mortgage or advance on a mortgage made to a public housing agency on a project under construction which is not approved for insurance prior to construction.

(5) As used in this subsection, the term "public housing agency" has the same meaning as in section 3(6) of the United States Housing Act of 1937, and the term "insured depository institution" means any savings bank, savings and loan association, commercial bank or other such depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by an agency or instrumentality of a State.

(6) Notwithstanding any other provision of this Act, the Secretary may include in the determination of replacement cost of a project to be covered by a mortgage made to a public housing agency and insured pursuant to this subsection, such reserves and development costs, not to exceed 5 per centum of the amount otherwise allowable, as may be established or authorized by the public housing agency consistent with such agency's procedures and underwriting standards.

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TITLE VIII—ARMED SERVICES HOUSING MORTGAGE INSURANCE

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SEC. 803. (a) * * *

(b) To be eligible for insurance under this title a mortgage shall meet the following conditions:

(1) The mortgaged property shall be held by a mortgagor approved by the Secretary. The Secretary may, in his discretion, require such mortgagor to be regulated or restricted as to capital structure, and methods of operation. The Secretary may make such contracts with, and acquire for not to exceed $100 stock or interest in, any such mortgagor, as the Secretary may deem necessary to render effective such restriction or regulation. Such stock or interest shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgaged property shall be designed for use for residential purposes by personnel of the armed services and situated at or near a military installation, and the Secretary of Defense or his designee shall have certified that there is no intention, so far as can reasonably be foreseen, to substantially curtail the personnel assigned or to be assigned to such installation, and (i) shall have determined that for reasons of safety, security, or other essential military requirements, it is necessary that the personnel involved reside in public quarters *Provided, however*, That for the purposes of this subsection housing covered by a mortgage insured, or for which a commitment to insure has been issued, under section 803 prior to the enactment of the "Housing Amendments of 1955" may be considered the same as available quarters, and (ii) with the approval of the Secretary, shall have determined that adequate housing is not available for such personnel at reasonable rentals within reasonable commuting distance of the installation and that the mortgaged property will not, so far as can reasonably be foreseen, substantially curtail occupancy in existing housing covered by mortgages insured under this Act. The housing accommodations shall comply with such standards and conditions as the Secretary may prescribe to establish the acceptability of such property for mortgage insurance, except that the certification of the Secretary of Defense or his designee shall (for purposes of mortgage insurance under this title) be conclusive evidence to the Secretary of the existence of the need for such housing. However, if the Secretary does not concur in the housing needs as certified by the Secretary of Defense the Secretary may require the Secretary of Defense to guarantee the General Insurance Fund against loss with respect to the mortgage covering such housing. [The Secretary shall report to the Committees on Banking and Currency of the Senate and the House of Representatives each instance in which he has required the Secretary of Defense to guarantee the General Insurance Fund, with reasons therefor.] There are hereby authorized to be appropriated such sums as may be necessary to provide for payment to meet losses arising from such guaranty.

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TITLE XII—NATIONAL INSURANCE DEVELOPMENT PROGRAM

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PART C—FEDERAL INSURANCE AGAINST BURGLARY AND THEFT

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REPORTS ON OPERATIONS

SEC. 1234. The Secretary shall include *at least biennially* in his reports to the Congress on the program authorized by this title full and complete information on his operations and activities under this part, together with such recommendations with respect thereto as he may deem appropriate.

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SECTION 505 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1970

DEMONSTRATION WITH RESPECT TO ABANDONED PROPERTIES

SEC. 505. (a) * * *

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[(f) The Secretary shall report annually to the Congress with respect to the status of demonstration projects funded by him and shall make such recommendations to the Congress as he deems necessary to further the purposes of this section.]

SECTION 704 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1965

ADVANCE ACQUISITION OF LAND

SEC. 704. (a) In order to encourage and assist the timely acquisition of land planned to be utilized in the future for public purposes, the Secretary is authorized to make grants to States and local public bodies and agencies to assist in financing the acquisition of a fee simple estate or other interest in such land.

(b) The amount of any grant made under this section shall not exceed the aggregate amount of reasonable interest charges on the loans or other financial obligations incurred to finance the acquisition of such land for a period not in excess of the lesser of (1) five years from the date of acquisition of such land or (2) the period of time between the date on which the land was acquired and the date its use began for the purpose for which it was acquired: *Provided*, That where all or any portion of the cost of such land is not financed through borrowings, the amount of the grant shall be computed on the basis of the aggregate amount of reasonable interest charges that the Secretary determines would have been required.

(c) No grant shall be made under this section unless the Secretary determines that the land will be utilized for a public purpose within a reasonable period of time and that such utilization will contribute to economy, efficiency, and the comprehensively planned development of the area. The Secretary shall in all cases require that land acquired with the assistance of a grant under this section be utilized for a public purpose within five years after the date on which a contract to make such grant is entered into, **[**unless the Secretary (1) determines that due to unusual circumstances a longer period of time is necessary and in the public interest, and (2) reports such determination promptly to the Committees on Banking and Currency of the Senate and House of Representatives**]** *unless the Secretary determines that due to unusual circumstances a longer period of time is necessary and in the public interest.*

* * * * * * *

SECTION 1 OF THE ACT OF OCTOBER 15, 1966

AN ACT to authorize the Secretary of the Interior to enter into contracts for scientific and technological research and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Interior is authorized to enter into contracts with educational institutions, public or private agencies or organizations, or persons for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Department of the Interior which are authorized by statute.

(b) * * *

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[(d) No contract involving more than $25,000 shall be executed under subsection (a) of this section prior to thirty calendar days from the date the same is submitted to the President of the Senate and the Speaker of the House of Representatives and said thirty calendar days shall not include days on which either the Senate or the House of Representatives is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die.**]**

SECTION 1 OF THE ACT OF MARCH 2, 1895

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriate, for the objects hereinafter expressed, for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, namely:

UNDER THE TREASURY DEPARTMENT

* * * * * * *

SURVEYING THE PUBLIC LANDS.

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For the survey of the public lands lying within the limits of land grants made by Congress to aid in the construction of railroads, and the selection therein of such lands as are granted therefor, to enable the Secretary of the Interior to carry out the provisions of section one of the Act of March third, eighteen hundred and eighty-seven, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes," being chapter three hundred and seventy-six of volume twenty-four of the Statutes at Large, page five hundred and fifty-six, the sum of one hundred thousand dollars is hereby appropriated and made a continuing appropriation for the survey of lands within the limits of railroad land grants, and any money which shall be expended of such appropriation and reimbursed and paid into the Treasury is hereby reappropriated, and said sum shall remain a continuing appropriation, and so often as any part of the same shall, after being expended, be reimbursed by any railroad company as hereinafter provided, the same shall be again available for the purposes aforesaid: *Provided*, That any portion of said sum expended for surveying such lands shall be reimbursed by the respective companies or parties in interest for whose benefit the lands are granted, according to the provisions of the Act of July fifteenth, eighteen hundred and seventy, chapter two hundred and ninety-two, volume sixteen, pages three hundred and five and three hundred and six, and Act of July thirty-first, eighteen hundred and seventy-six, chapter two hundred and forty-six of volume nineteen, page one hundred and twenty-one of the Statutes at Large, requiring "that before any lands granted to any railroad company shall be conveyed to such company or any persons entitled thereto under any of the Acts incorporating or relating to said company, unless said company is excepted by law from the payment of such cost, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or persons in interest": *And provided further*, That whenever there shall have been reimbursed and paid into the Treasury of the United States, by the respective companies or parties in interest, any part of said appropriation expended for surveys within such grants, there shall be immediately available, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount so reimbursed, and the same shall be available for the survey of the public lands lying within the limits of the railroad land grants made by Congress, until all of said lands shall have been surveyed: *Provided*, That nothing herein contained shall be construed to prevent the use, within the limits of any railroad land grant made by Congress, of any part of any regular appropriation for surveying the public lands: *Provided*, That no part of the foregoing money shall be used for any land embraced in any grant to the State of Florida: *And provided further*, That the provisions of law requiring reimbursements to be made to the United States by railroad corporatons claiming such grants, shall apply equally to the successors of such railroad corporations acquiring title to their lands and other property, under decree of foreclosure of any mortgage authorized by Congress. This paragraph shall be in lieu of the provision in the sundry civil appropriation Act approved August eighteenth, eighteen hundred and ninety-four, providing for the survey of such lands [, and the Secretary of the Interior shall report to each regular session of Congress what has been done under the foregoing provisions].

* * * * * * *

COLORADO RIVER STORAGE PROJECT ACT

That, in order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing purposes, the Secretary of the Interior is hereby authorized (1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works: Curecanti, Flaming Gorge, Navajo (dam and reservoir only), and Glen Canyon: *Provided*, That the Curecanti Dam shall be constructed to a height which will impound not less than nine hundred and forty thousand acre-feet of water or will create a reservoir of such greater capacity as can be obtained by a high waterline located at seven thousand five hundred and twenty feet above mean sea level, and that construction thereof shall not be undertaken until the Secretary has, on the basis of further engineering and economic investigations, reexamined the economic justification of such unit and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress and to the President that, in his judgment, the benefits of such unit will exceed its costs; and (2) to construct, operate, and maintain the following additional reclamation projects (including power-generating and transmission facilities related thereto), hereinafter referred to as participating projects: Central Utah (initial phase and the Uintah unit), San Juan-Chama (initial stage); Emery County, Florida, Hammond, La Barge, Lyman, Navajo Indian, Paonia (including the Minnesota unit, a dam and reservoir on Muddy Creek just above its confluence with the North Fork of the Gunnison River, and other necessary works), Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel, Seedskadee, Savory-Pot Hook, Bostwick Park, Fruitland Mesa, Silt and Smith Fork: [*Provided*, That construction of the Uintah unit of the Central Utah project shall not be undertaken by the Secretary until he has completed a feasibility report on such unit and submitted such report to the Congress along with his certification that, in his judgment, the benefits of such unit or segment will exceed the costs and that such unit is physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof:] *Provided further*, That as part of the Glen Canyon Unit the Secretary of the Interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument.

SECTION 4 OF THE ACT OF SEPTEMBER 7, 1964

AN ACT to provide for the construction of the Lower Teton division of the Teton Basin Federal reclamation project, Idaho, and for other purposes

SEC. 4. (a) * * *

* * * * * * *

[(c) No construction shall be undertaken on facilities of the Lower Teton division which are required solely to provide a full water supply to lands in the Rexburg Bench area until the Secretary has submitted his report and finding of feasibility on this phase of the division to the President and to the Congress.]

SECTION 76 OF THE ACT OF APRIL 30, 1900

AN ACT to provide a government for the Territory of Hawaii.

[SUPERINTENDENT OF PUBLIC INSTRUCTION.

[SEC. 76. That there shall be a superintendent of public instruction, who shall have the powers and perform the duties conferred upon and required of the minister of public instruction by the laws of Hawaii as amended by this Act, and subject to modification by the legislature.

[It shall be the duty of the United States Commissioner of Labor to collect, assort, arrange, and present in annual reports statistical details relating to all departments of labor in the Territory of Hawaii, especially in relation to the commercial, industrial, social, educational, and sanitary condition of the laboring classes, and to all such other subjects as Congress may, by law, direct. The said commissioner is especially charged to ascertain, at as early a date as possible, and as often thereafter as such information may be required, the highest, lowest, and average number of employees engaged in the various industries in the Territory, to be classified as to nativity, sex, hours of labor, and conditions of employment, and to report the same to Congress.]

SECTION 302 OF THE MUTUAL DEFENSE ASSISTANCE CONTROL ACT OF 1951

SEC. 302. The Administrator with regard to all titles of this Act shall—

(a) coordinate those activities of the various United States departments and agencies which are concerned with security controls over exports from other countries;

(b) make a continuing study of the administration of export control measures undertaken by foreign governments in accordance with the provisions of this Act, and shall report to the Congress [from time to time but not less than once every six months recommending action] where appropriate; and

(c) make available technical advice and assistance on export control procedures to any nation desiring such cooperation.

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

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TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

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SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) * * *

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) * * *

* * * * * * *

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) [a copy of such material] *a monthly summary of foreign fishing applications including a report on approved applications as described in paragraphs (6) and (7)* to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

* * * * * * *

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; *and*

(C) any Council which has authority over any fishery specified in such application.

[(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.]

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TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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SEC. 311. ENFORCEMENT.

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Departments of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report [semiannually] *annually on June 30*, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act *during the preceding calendar year.*

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SECTION 3 OF THE AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970

SEC. 3. National Transportation Policy

(a) FORMULATION OF POLICY.—Within one year after the date of enactment of this title, the Secretary of Transportation shall formulate and recommend to the Congress for approval a national transportation policy. In the formulation of such policy, the Secretary shall take into consideration, among other things—

(1) the coordinated development and improvement of all modes of transportation, together with the priority which shall be assigned to the development and improvement of each mode of transportation; and

(2) the coordination of recommendations made under this title relating to airport and airway development with all other recommendations to the Congress for the development and improvement of our national transportation system.

[(b) ANNUAL REPORT.—The Secretary shall submit an annual report to the Congress on the implementation of the national transportation policy formulated under subsection (a) of this section. Such report shall include the specific actions taken by the Secretary with respect to (1) the coordination of the development and improvement of all modes of transportation, (2) the establishment of priorities with respect to the development and improvement of each mode of transportation, and (3) the coordination of recommendations under this title relating to airport and airway development with all other recommendations to the Congress for the development and improvement of our national transportation system.]

TITLE 23, UNITED STATES CODE

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Chapter 1.—FEDERAL-AID HIGHWAYS

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§ 112. Letting of contracts.

(a) In all cases where the construction is to be performed by the State highway department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) Construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. [All such findings shall be reported promptly in writing to the Committees on Public Works of the Senate and the House of Representatives. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility.] No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

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§ 151. Pavement marking demonstration program.

(a) * * *

* * * * * * *

(g) Each State shall report to the Secretary of Transportation not later than September 30, 1974, and not later than [September] *December* 30 of each year thereafter, on the progress being made in implementing the program and the effectiveness of the improvements made under it. Each report shall include an analysis and evaluation of the number, rate, and severity of accidents at improved locations and the cost-benefit ratio of such improvements, comparing an adequate time period before and after treatment in order to properly assess the benefits occurring from such pavement markings. The Secretary of Transportation shall submit a report to the Congress not later than January 1, 1975, and not later than [January] *April* 1 of each year thereafter, on the progress being made in implementing the program and the safety benefits achieved under it. No State shall submit any such report to the Secretary for any year after the second year following completion of the pavement marking program in that State, and the Secretary shall not submit any such report to Congress after the first year following the completion of the pavement marking program in all States.

Chapter 3.—GENERAL PROVISIONS

* * * * * * *

§ 307. Research and planning.

(a) * * *

(b) The Secretary shall include in the highway research program herein authorized studies of economic highway geometrics, structures, and desirable weight and size standards for vehicles using the public highways and of the feasibility of uniformity in State regulations with respect to such standards **[**and he shall report from time to time to the Committee on Public Works of the Senate and of the House of Representatives on the progress and findings with respect to such studies**]**. The highway research program herein authorized shall also include studies to identify and measure, quantitatively and qualitatively, those factors which relate to economic, social, environmental, and other impacts of highway projects.

* * * * * * *

SECTION 475 OF TITLE 14, UNITED STATES CODE

§ 475. Leasing and hiring of quarters; rental of inadequate housing

(a) * * *

* * * * * * *

(e) The Secretary shall annually, not later than April 1, file with the Speaker of the House of Representatives and the President of the Senate a complete report of the utilization of the authority granted in subsection (a), (b), **[**(c)**]** and (d) during the preceding calendar year.

* * * * * * *

FEDERAL AVIATION ACT OF 1958

* * * * * * *

TITLE III—ORGANIZATIONS OF ADMINISTRATION* AND POWERS AND DUTIES OF ADMINISTRATOR*

* * * * * * *

Administration of the Administration*

AUTHORIZATION OF EXPENDITURES AND TRAVEL

Sec. 303. (a) * * *

* * * * * * *

NEGOTIATION OF PURCHASES AND CONTRACTS

(e) The Secretary of Transportation may negotiate without advertising purchases of and contracts for technical or special property related to, or in support of, air navigation that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property. [The Secretary shall, at the beginning of each fiscal year, report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce of the Senate all transactions negotiated under this subsection during the preceding fiscal year.]

* * * * * * *

TITLE III—AVIATION INSURANCE*

* * * * * * *

[Annual Reports to Congress

[Sec. 1309. The Secretary shall include in his annual report to Congress a detailed statement of all activities and of all expenditures and receipts under this title for the period covered by such report.]

* * * * * * *

Section 10 of the Act of September 30, 1965

AN ACT To authorize the Secretary of Commerce to undertake research and development in high-speed ground transportation, and for other purposes

Sec. 10. [(a) The Secretary shall report to the President and the Congress not less often than annually with respect to activities carried out under this Act.

[(b) The Secretary shall report to the President and the Congress the results of his evaluation of the research and development program and the demonstration program authorized by this Act, and shall make recommendations to the President and the Congress with respect to such future action as may be appropriate in the light of these results and their relationship to other modes of transportation in attaining the objective of promoting a safe, adequate, economical, and efficient national transportation system.]

* * * * * * *

Section 10 of the Emergency Rail Services Act of 1970

REPORTS

Sec. 10. [The Secretary shall make an annual report to the President and the Congress with respect to his activities pursuant to this Act, including an evaluation of the financial conditions of railroads which have outstanding certificates guaranteed under this Act.] The Secretary shall [also] make a report to the President and the Congress on the financial condition of each railroad *except the Central Railroad Company of New Jersey and the Penn Central Transportation Com-*

best copy available

pany, having a loan guaranteed under this Act ninety days after the making of such guarantee and annually thereafter throughout the existence of such loan.

SECTION 3 OF THE BLACK LUNG BENEFITS REVENUE ACT OF 1977

SEC. 3. TRUST FUND AND OPERATOR LIABILITY.

(a) ESTABLISHMENT OF FUND.—

(1) * * *

* * * * * * *

(c) DUTIES OF THE SECRETARY OF THE TREASURY.—

[(1) The Secretary of the Treasury shall hold the fund and (after consultation with the other trustees of the fund) shall report to the Congress not later than the last day of March of 1979, and of each succeeding year, on the financial condition and the results of the operations of the fund during the preceding fiscal year (including a detailed statement of the expenses paid out of the fund under subsection (a)(4) of section 424 of the Federal Coal Mine Health and Safety Act of 1969) and on its expected condition and operations during the fiscal year in which the report is made. The report shall be printed as a House document of the session of the Congress to which the report is made.]

(1) It shall be the duty of the Secretary of the Treasury to hold the fund.

* * * * * * *

SECTION 405 OF THE DOMESTIC VOLUNTEER SERVICE ACT

NATIONAL VOLUNTARY SERVICE ADVISORY COUNCIL

SEC. 405. (a) * * *

[(c) Not later than January 1 of each calendar year beginning with the calendar year 1975, the Council shall make an annual report of findings and recommendations to the President for transmittal by the President to the Congress together with his comments and recommendations.]

* * * * * * *

SECTION 14 OF THE FLAMMABLE FABRICS ACT

INVESTIGATIONS

SEC. 14. (a) The Secretary of Health, Education, and Welfare in cooperation with the Secretary of Commerce shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials. The Secretary of Health, Education, and Welfare shall submit annually a report to the President and to the Congress containing the results of the study and investigation.

(b) In cooperation with appropriate public and private agencies, the Secretary of Commerce is authorized to—

(1) conduct research into the flammability of products, fabrics, and materials;

(2) conduct feasibility studies on reduction of flammability, of products, fabrics, and materials;

(3) develop flammability test methods and testing devices; and

(4) offer appropriate training in the use of flammability test methods and testing devices.

[The Secretary shall annually report the results of these activities to the Congress.]

Section 1 of the Act of July 7, 1968

AN ACT

To enable the Export-Import Bank of the United States to approve extension of certain loans, guarantees, and insurance in connection with exports from the United States in order to improve the balance of payments and foster the long-term commercial interests of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) It is the policy of the Congress that the Export-Import Bank of the United States should facilitate through loans, guarantees, and insurance (including coinsurance and reinsurance) those export transactions which, in the judgment of the Board of Directors of the Bak offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States.

(b) * * *

[(c) The Board of Directors of the Bank shall submit to the Congress for the calendar quarter ending September 30, 1968, and for each calendar quarter thereafter a report of all actions taken under authority of this Act during such quarter.]

Section 5 of the Communication Act of 1934

ORGANIZATION AND FUNCTIONING OF THE COMMISSION

Sec. 5. (a) * * *

* * * * * * *

(e) Meetings of the Commission shall be held at regular intervals, not less frequently than once each calendar month, at which times the functioning of the Commission and the handling of its work load shall be reviewed and such orders shall be entered and other action taken as may be necessary or appropriate to expedite the prompt and orderly conduct of the business of the Commission with the objective of rendering a final decision (1) within three months from the date of filing in all original application, renewal, and transfer cases in which it will not be necessary to hold a hearing, and (2) within six months from the final date of the hearing in all hearing cases [; and the Commission shall promptly report to the Congress each such case which has been pending before it more than such three- or six-month period, respectively, stating the reasons therefor].

SECTION 1008 OF THE UNITED STATES INFORMATION AND EDUCATIONAL EXCHANGE ACT OF 1948

[REPORTS TO CONGRESS

[SEC. 1008. The Secretary shall submit to the Congress annual reports of expenditures made and activities carried on under authority of this Act, including appraisals and measurements, where feasible, as to the effectiveness of the several programs in each country where conducted.]

SECTION 6 OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1970

SEC. 6. (a) As used in this section—

* * * * * * *

[(d) The Administrator shall, not later than March 31 of each year, file with the President of the Senate and the Speaker of the House of Representatives a report containing a list of the names of persons who have filed reports with him for the preceding fiscal year pursuant to subsections (b) (1) and (b) (2) of this section. The Administrator shall include after each name so much information as he deems appropriate, and shall list the names of such persons under the aerospace contractor for whom they worked or for whom they performed services.]

* * * * * * *

SECTION 206 OF THE ACT OF OCTOBER 4, 1961

AN ACT to increase the limitation on the number of positions which may be placed in the top grades of the Classification Act of 1949, as amended, to provide certain additional research and development positions, and for other purposes

INCREASE IN NUMBER OF SCIENTIFIC, ENGINEERING, AND ADMINISTRATIVE POSITIONS IN THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION UNDER SECTION 203(b)(2) OF THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958

SEC. 206. (a) * * *

[(b)(1) The Administrator of the National Aeronautics and Space Administration shall submit to the Congress not later than forty-five days after the close of each fiscal year a report which sets forth, as of the close of such fiscal year—

[(A) the number of positions established under section 203 (b) (2) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(b)(2));

[(B) the name, rate of compensation, and description of the qualifications of each incumbent of each position established under such section 203(b)(2), together with the position title and a statement of the duties and responsibilities performed by each such incumbent;

[(C) the position or positions in or outside the Federal Government held by each such incumbent, and his rate or rates of compensation, during the five-year period immediately preceding the date of appointment of such incumbent to such position; and

[(D) such other information as the Administrator may deem appropriate or which may be required by the Congress or a committee thereof.

Nothing contained in this subsection shall require the resubmission of any information required under subparagraphs (B) and (C) of this subsection which as been reported pursuant to this subsection and remains unchanged.

[(2) In any instance in which the Administrator may find full public disclosure of any or all of the matter covered by paragraph (1) of this subsection to be detrimental to the national security, the Adminisrator is authorized—

[(A) to omit in such report those matters with respect to which full public disclosure is found to be detrimental to the national security;

[(B) to inform the Congress of such omission; and

[(C) at the request of any congressional committee to which such report is referred, to present all information concerning such matters.]

SECTION 10 OF THE NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT, FISCAL YEAR, 1978

SEC. 10. (a)(1) * * *

* * * * * * *

[(c) The Director shall report annually to the Congress on the administration and enforcement of this section.]

* * * * * * *

SECTION 4 OF THE ACT OF OCTOBER 22, 1975

AN ACT to amend title 38, United States Code, to provide special pay and incentive pay for certain physicians and dentists employed by the Department of Medicine and Surgery of the Veterans' Administration in order to enhance the recruitment and retention of such personnel, and for other purposes

SEC. 4. (a) * * *

* * * * * * *

[(h) The Administrator of Veterans' Affairs shall submit to the appropriate Committees of the House of Representatives and the Senate reports, prepared by the Chief Medical Director, specifying the effect on the administration and achievement of the mission of the Department of Medicine and Surgery of the alternative courses and recommended course of action identified in the reports required by this section. Each such report shall be submitted no later than one hundred and twenty days after the date on which such other report in question is submitted to the Congress.]

SECTION 1308 OF TITLE 5, UNITED STATES CODE

§ 1308. Annual reports

[(a) The Office of Personnel Management shall make an annual report to the President for transmittal to Congress. The report shall include—

[(1) a statement of the Office's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reasons for exceptions to the rules, the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

[(2) the results of the incentive awards program authorized by chapter 45 of this title with related recommendations;

[(3) at the end of each fiscal year, the names, addresses, and nature of employment of the individuals on whom the Merit Systems Protection Board has imposed a penalty for prohibited political activity under section 7325 of this title with a statement of the facts on which action was taken, and the penalty imposed; and

[(4) a statement, in the form determined by the Office with the approval of the President, on the training of employees under chapter 41 of this title, including—

[(A) a summary of information concerning the operation and results of the training programs and plans of the agencies;

[(B) a summary of information received by the Office from the agencies under section 4113(b) of this title; and

[(C) the recommendations and other matters considered appropriate by the President or the Office or required by Congress.

[(b) The Office shall annually provide an analysis to Congress of the administration and operation of chapter 41 of this title.]

[(c)] *(a)* The Office shall publish an annual report on the operation of subchapter III of chapter 83 of this title, including a statement concerning the status of the Civil Service Retirement and Disability Fund.

[(d)] *(b)* The Office shall report annually to Congress on the operation of chapter 87 of this title.

[(e)] *(c)* The Office shall report annually to Congress on the operation of chapter 89 of this title.

Section 4 of the Railway Labor Act

NATIONAL MEDIATION BOARD

Sec. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, Secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of all successors shall expire three years after expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to te expiration of the term of which his predecessor was appointed shal be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining member of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for not other cause.

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judically noticed. [The Board shall make an annual report to Congress.]

* * * * * * *

Section 305 of the Drug Abuse Office and Treatment Act of 1972

§ 305. Review and revision.

The strategy shall be reviewed, revised as necessary, and promulgated as revised prior to June 1 [of each year], *1979 and every other year thereafter.*

Section 12 of the Shipping Act, 1916

Sec. 12. That the board shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. It shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and it shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. It shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as it deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. It shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

[It shall, on or before the first day of December in each year, make a report to the Congress, which shall include] *The Secretary of Commerce shall include in the annual report pursuant to section 208 of the Merchant Marine Act, 1936,* its recommendations and the results of its investigations, a summary of its transactions, and a statement of all expenditures and receipts under this act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the board.

Public Works and Economic Development Act of 1965

REDEVELOPMENT AREA LOAN PROGRAM

Sec. 204. (a) * * *

(b)(1) Each eligible recipient which receives assistance under this section shall annually during the period such assistance continues make a full and complete report to the Secretary, in such manner as the Secretary shall prescribe, and such report shall contain an evaluation of the effectiveness of the economic assistance provided under this section in meeting the need it was designed to alleviate and the purposes of this section.

(2) The Secretary shall [provide an annual consolidated report to the Congress.] *include in the annual report pursuant to section 707 of this Act a consolidated report* with his recommendations, if any, on the assistance authorized under this section, in a form which he deems appropriate. [The first such report to Congress under this subsection shall be made not later than July 1, 1977.]

* * * * * * *

REPORTS AND EVALUATION

SEC. 904. (a) Each eligible recipient which receives assistance under this title shall annually during the period such assistance continues make a full and complete report to the Secretary, in such manner as the Secretary shall prescribe, and such report shall contain an evaluation of the effectiveness of the economic assistance provided under this title in meeting the need it was designed to alleviate and the purposes of this title.

(b) The Secretary shall [provide an annual consolidated report to the Congress,] *include in the annual report pursuant to section 707 of this Act a consolidated report* with his recommendations, if any, on the assistance authorized under this title, in a form which he deems appropriate. [The first such report to Congress under this subsection shall be made not later than January 30, 1976.]

SECTION 112 OF THE MARINE MAMMAL PROTECTION ACT OF 1972

REGULATIONS AND ADMINISTRATION

SEC. 112. (a) * * *

* * * * * * *

(d) The Secretary shall review annually the operation of each program in which the United States participates involving the taking of marine mammals on land. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of policies of this Act, he shall suspend the operation of that program and shall [forthwith submit to Congress] *include in the annual report to the public and the Congress required under section 103(f) of this Act* his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

* * * * * * *

TITLE I—OCEAN DUMPING

* * * * * * *

[SEC. 112. The Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating shall each individually report annually, on or before March 1 of each year, with the first report to be made on or before June 30, 1973 to the Congress, on his administration of this title, including recommendations for additional legislation if deemed necessary.]

Sec. 112. The Administrator shall on or before February 1 of each year report to the Congress on the administration of this title during the preceding fiscal year, including recommendations for additional legislation if deemed necessary.

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

Sec. 201. The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of monitoring and research regarding the effects of the dumping of material into ocean waters or other coastal waters where the tide ebbs and flows or into the Great Lakes or their connecting waters and shall *include,* [report from time to time, not less frequently than annually,] his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) [to the Congress] *as a separate section of the annual report to the Congress required by section 202(c)*

* * * * * * *

Sec. 202. (a) * * *

* * * * * * *

[(c) In March of each year, the Secretary of Commerce shall report to the Congress on the results of activities undertaken by him pursuant to this section during the previous fiscal year.]

(c) On or before February 1 of each year, the Secretary of Commerce shall report to the Congress on the administration of this title and title III of this Act during the preceding fiscal year. The Secretary shall include in each annual report a description of the results of the activities undertaken pursuant to this section during the preceding fiscal year, and the matters reequired to be included in the report by sections 201 and 302(d) of this Act. The Secretary shall also include as a separate section in each annual report the report to the Congress of activities of the Department of Commerce under section 5 of the Act of March 10, 1934 (16 U.S.C. 665; 48 Stat. 401), which is required by that section.

* * * * * * *

TITLE III—MARINE SANCTUARIES

* * * * * * *

Sec. 302. (a) * * *

* * * * * * *

[(d) The Secretary shall submit an annual report to the Congress, on or before November 1 of each year, setting forth a comprehensive review of his actions during the previous fiscal year undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries.]

(d) The Secretary shall include, as a separate section, in the annual report to the Congress required by section 202(c) of this Act a comprehensive review of actions taken during the preceding fiscal year in the administration of this title, including recommendations for additional legislation if deemed necessary.

* * * * * * *

SECTION 306 OF TITLE 37, UNITED STATES CODE

§ 306. Special pay: officers holding positions of unusual responsibility and of critical nature

(a) * * *

(f) [The Secretary of Defense shall report to Congress by March 1 of each year on the administration of this section within each military department during the preceding calendar year.] *The Secretary of Defense shall report to Congress by March 1 of each year following a calendar year in which special pay is disbursed under this section. Negative reports need not be submitted.* The Secretary of Transportation shall make a similar report for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

SECTION 43 OF THE ACT OF AUGUST 10, 1956

An Act to revise, codify, and enact into law, title 10 of the United States Code, entitled "Armed Forces", and title 32 of the United States Code, entitled "National Guard"

REAL PROPERTY TRANSACTIONS OF FEDERAL CIVIL DEFENSE ADMINISTRATION

SEC. 43. (a) * * *

* * * * * * *

(b) The Administrator shall report [quarterly] *annually* to the Committees on Armed Services of the Senate and the House of Representatives on transactions described in subsection (a) that involve an estimated value of more than $5,000 but not more than $25,000.

* * * * * * *

SECTION 11 OF THE ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

SEC. 11. REPORTING OF ENERGY INFORMATION

(a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(3) In order to carry out his responsibilities under subsection (a) of this section, the Federal Energy Administrator shall require, pur-

suant to subsection (b)(1)(A) of this section, that persons engaged, in whole or in part, in the production of crude oil or natural gas—

(A) keep energy information in accordance with the accounting practices developed pursuant to section 503 of the Energy Policy and Conservation Act, and

(B) submit reports with respect to energy information kept in accordance with such practices.

The Administrator shall [file quarterly reports with the President and the Congress] *include a separate section in reports filed pursuant to section 57(a) of the Federal Energy Administration Act of 1974 containing information* compiled from accounts kept in accordance with such section 503 and submitted to the Administrator in accordance with this paragraph. Such reports shall present energy information in the categories specified in subsection (c) of such section 503 to the extent that such nformation may be compiled from such accounts. [Such energy information shall be collected and such quarterly reports made for each calendar quarter which begins 6 months after the date on which the accounting practices developed pursuant to such section 503 are made effective.]

Section 13 of the Solar Energy Research, Development and Demonstration Act of 1974

ANNUAL REPORTS

[Sec. 13. The Chairman shall report, on an annual basis, to the President and the Congress all actions taken under the provisions of this Act, all action planned for the ensuing year, and, to the extent practical, a projection of activities and funding requirements, for the ensuing five years. The Chairman also shall recommend, as he deems appropriate, any legislation or reorganization which might further the purposes of this Act.]

Sec. 13. A summary of all actions taken under the provisions of this Act and action planned for the ensuing year shall be included in the annual report required by section 657 of the Department of Energy Organization Act (42 U.S.C. 7267).

AN ACT to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes

Sec. 308. (a) Each officer or employee of the [Energy Research and Development Administration] *Department of Energy* who—

(1) performs any functions or duty under this Act or any other Act amended by this Act; and

(2) has any known financial interest—

(A) in any person engaged in the business, other than at the retail level, of developing, producing, refining, transporting by pipeline, or converting into synthetic fuel, minerals, wastes, or renewable resources, or in the generation of energy from such minerals, wastes, or renewable resources, or in conducting research, development, and demonstration with financial assistance under this Act or any other Act amended by this Act, or

(B) in property from which minerals are commercially produced,

shall, beginning on February 1, 1977, annually file with the [Administrator] *Secretary of Energy* a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statements shall be available to the public.

(b) The [Administrator] *Secretary of Energy* shall—

(1) act within ninety days after the date of enactment of this section—

(A) to define the term "known financial interest" for purposes of paragraph (2) of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the [Administrator] *Secretary of Energy* of such statements; and

[(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.]

(2) report annually to the Congress with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

SECTION 308 OF THE ACT OF DECEMBER 31, 1975

AN ACT to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes

SEC. 308. The [Administrator] *Secretary of Energy* shall, [by June 30, 1976, and by the end of each fiscal year thereafter, submit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Interior and Insular Affairs of the Senate] *include, in the report required by section 204(b) of the Department of Energy Act of 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), information* detailing the extent to which small business and nonprofit organizations are being funded by the nonnuclear research, development, and demonstration programs of the [Administrator] *Secretary of Energy*, and the extent to which small business involvement pursuant to section 2(d) of the Energy Reorganization Act of 1974 (42 U.S.C. 5801(d)) is being encouraged by the [Administrator] *Secretary of Energy.*

Section 507 of the Rehabilitation Act of 1973

INTERAGENCY COORDINATING COUNCIL

Sec. 507. There shall be established a Interagency Coordinating Council (hereinafter referred to in this section as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Attorney General, the Chairman of the United States Civil Service Commission, the Chairman of the Equal Employment Opportunity Commission, and the Chairman of the Architectural and Transportation Barriers Compliance Board. The Council shall have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this title, and the regulations prescribed thereunder. On or before July 1 of **[**each**]** *every other* year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section. Nothing in this section shall impair any responsibilities assigned by any Executive Order to any Federal department, agency, or instrumentality to act as a lead Federal agency with respect to any provisions of this title.

Section 1320 of the National Flood Insurance Act of 1968

REPORT TO THE PRESIDENT

Sec. 1320. The Secretary shall **[**include**]** *biennially submit* a report of operations under this title **[**in the annual report**]** to the President for submission to the Congress **[**required by section 8 of the Department of Housing and Urban Development Act**]**.

Section 6 of the Guam Development Fund Act of 1968

Sec. 6. **[**The Governor of Guam shall make an annual report to the Secretary of the Interior on the administration of this Act who shall then forward copies of such reports to the Speaker of the House of Representatives and the President of the Senate**]** *The Governor of Guam shall include in the annual report to Congress required pursuant to section 6 of the Guam Organic Act (48 U.S.C. 1422; 64 Stat. 386) a report on the administration of this Act.*

SECTION 9 OF THE ACT OF JULY 22, 1954

AN ACT to revise the Organic Act of the Virgin Islands of the United States

* * * * * * *

SEC. 9. (a) * * *

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[(g) Copies of all laws enacted by the legislature shall be transmitted within fifteen days of their enactment by the Governor to the Secretary of the Interior and by him annually to the Congress of the United States.]

(g) A listing of all laws enacted by the legislature each year shall be transmitted with the annual report to Congress required pursuant to secton 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591; 68 Stat. 503).

THE ACT OF MARCH 3, 1885

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes

* * * * * * *

PROPAGATION OF FOOD FISHES: (1) For the introduction by the United States Fish Commission into and the increase in the waters of the United States of food-fishes and other useful products of the waters, including lobsters, oysters, and other shell fish, and for continuing the inquiry into the fisheries of the United States and their subjects, and for such general and miscellaneous expenditures as the Commissioner of Fish and Fisheries may find necessary to the prosecution of his work, including salaries or compensation of all necessary employees, one hundred and thirty thousand dollars.

(2) (A) As used in this subparagraph, the term "agency" means the department in which the Coast Guard is operating, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Atomic Energy Commission, and the National Aeronautics and Space Administration.

(B) The chief executive officer of each agency may from time to time—

(i) detail from the agency for duty under the Director of the Bureau of Sport Fisheries and Wildlife, Department of the Interior, such commissioned and enlisted personnel and civilian employees as may be spared for such duty; and

(ii) consonant with the operational needs of the agency, loan equipment of the agency to the Director.

(C) [The Director of the Bureau of Sport Fisheries and Wildlife shall make an annual report at the end of each fiscal year to the Congress concerning the utilization of the provisions of this subparagraph and the additional cost, if any, to the Federal Government resulting therefrom.] *The Director of the United States Fish and Wildlife Service shall make a report to Congress at the end of any fiscal year that the provisions of this section are utilized, which describes the use of the provisions of this section, and the additional cost, if any, to the*

Federal Government resulting therefrom. Such [annual] report shall be referred in the Senate to the Committee on Commerce and in the House of Representatives to the Committee on Merchant Marine and Fisheries.

* * * * * * *

Section 6 of the Act of June 22, 1936

AN ACT to authorize the Secretary of the Interior to investigate and adjust irrigation charges on irrigation lands within projects on Indian reservations, and for other purposes

Sec. 6. The Secretary shall [make reports to the Congress on the first Monday of each regular session, and from time to time thereafter, showing the action taken under the provisions] *include in the report to Congress required pursuant to section 2 of this Act, a description of actions taken under the provisions of sections 1 to 6* of this Act during the preceding *fiscal* year. No proceedings under this Act shall become effective until approved by the Congress.

Section 204 of the Immigration and Nationality Act

PROCEDURE FOR GRANTING IMMIGRANT STATUS

Sec. 204. (a) * * *

* * * * * * *

(d) The Attorney General shall forward to the Congress a [report on each approved petition for immigrant status under sections 203(a)(3) or 203(a)(6) stating the basis for his approval and such facts as were by him deemed to be pertinent in establishing the beneficiary's qualifications for the preferential status.] *statistical summary of petitions for immigrant status approved by him under sections 203(a)(3) or 203(a)(6).* Such reports shall be submitted to the Congress on the first and fiteenth day of each calendar month in which the Congress is in session.

* * * * * * *

Section 9 of the Department of Transportation Act

ADMINISTRATIVE PROVISIONS

Sec. 9. (a) * * *

* * * * * * *

(d)(1) Appointment, detail, or assignment to, acceptance of, and service in any appointive or other position in the Department under the authority of section 9(c) and section 9(p) shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege or benefit incident to or arising out of any such status, office, rank, or grade, nor shall any member so appointed, detailed, or assigned be charged against any statutory limitation on grades or strengths applicable to the Armed Forces. A person so appointed, detailed, or assigned shall not be subject to direction by or control by his armed force or any officer thereof directly or indirectly with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

(2) The Secretary shall [report annually in writing to the appropriate committees of the Congress on] *include in the annual report required by section 11 a statement on* personnel appointed and agreements entered into under subsection (c) of this section, including the number, rank, and positions of members of the armed services detailed pursuant thereto.

* * * * * * *

SECTION 23 OF THE INTERNATIONAL ASSISTANCE SECURITY ACT OF 1978

SPECIAL SECURITY ASSISTANCE PROGRAM FOR THE MODERNIZATION OF THE ARMED FORCES OF THE REPUBLIC OF KOREA

SEC. 23. (a) * * *

* * * * * * *

(d) The President should also transmit to the Congress[, 120 days prior to each phase of troop withdrawal, a report on the viability of the withdrawal] *a review of the viability of each phase of troop withdrawal as part of the annual report on Korea as required by section 668 of the Foreign Assistance Act of 1961 (90 Stat. 729; 22 U.S.C. 2428)*. This report should include assessments of the military balance on the Korean peninsula, the impact of withdrawal on the military balance, the adequacy of the United States military assistance to the Republic of Korea, the impact of withdrawal on the United Nations and the Republic of Korea command structure, Republic of Korea defensive fortification and defense industry developments, the United States reinforcement capability, and the progress of diplomatic efforts to reduce tensions in the area.

(e)(1) It is the sense of the Congress that further withdrawal of ground forces of the United States from the Republic of Korea may seriously risk upsetting the military balance in that region and requires full advance consultation with the Congress.

(2) [Prior to any further withdrawal] *In the annual report on Korea required by section 668 of the Foreign Assistance Act of 1961 (22 U.S.C. 2428; 90 Stat. 729)*, the President shall report to the Congress on the effect of any proposed withdrawal plan on preserving deterrence in Korea, the reaction anticipated from North Korea, the effect of the plan on increasing incentives for the Republic of Korea to develop an independent nuclear deterrent, the effect of any withdrawal on our long-term military and economic partnership with Japan, the effect of any proposed withdrawal on the United States-Chinese and United States-Soviet military balance, and the possible implications of any proposed withdrawal on the Soviet-Chinese military situation.

* * * * * * *

Section 211 of the Federal Railroad Safety Act of 1970

SEC. 211. ANNUAL REPORT.

(a) The Secretary shall prepare and submit to the President for transmittal to Congress on or before **[**May**]** *July* 1 of each year a comprehensive report on the administration of this title for the preceding calendar year. Such report shall include, but not be restricted to—

(1) a thorough statistical compilation of the accidents and casualties by cause occurring in such year;

(2) a list of Federal railroad safety rules, regulations, orders, and standards issued under this title in effect or established in such year;

(3) a summary of the reasons for each waiver granted under section 202(c) of this title during such year;

(4) an evaluation of the degree of observance of applicable railroad safety rules, regulations, orders, and standards issued under this title;

(5) a summary of outstanding problems confronting the administration of Federal railroad safety rules, regulations, orders, and standards issued under this title in order of priority;

(6) an analysis and evaluation of research and related activities completed (including the policy implications thereof) and technological progress achieved during such year;

(7) a list, with a brief statement of the issues, of completed or pending judicial actions for the enforcement of any Federal railroad safety rule, regulation, order, or standard issued under this title;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of—

(A) certifications filed by State agencies under section 206(a) of this title which were in effect during the preceding calendar year, and

(B) certifications filed under section 206(a) of this title which were rejected, in whole or in part, by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) a compilation of—

(A) agreements entered into with State agencies under section 206(c) of this title which were in effect during the preceding calendar year, and

(B) agreements entered into under section 206(c) of this title which were terminated by the Secretary, in whole or in part, during the preceding calendar year, together with a summary of the reasons for each such termination.

* * * * * * *

FEDERAL-AID HIGHWAY ACT OF 1973

* * * * * * *

DEMONSTRATION PROJECT—RAILROAD-HIGHWAY CROSSINGS

SEC. 163. (a) * * *

* * * * * * *

(a) The Secretary shall make [annual] *biennial* reports and a final report to the President and the Congress with respect to his activities pursuant to this section.

* * * * * * *

RAILROAD-HIGHWAY CROSSINGS

SEC. 203. (a) * * *

* * * * * * *

(e) Each State shall report to the Secretary of Transportation no later than September 30, 1974, and not later than [September] *December* 30 of each year, thereafter, on the progress being made to implement the railroad-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Congress not later than January 1, 1975, and not later than [January] *April* 1, of each year thereafter, on the progress being made by the States in implementing projects to improve railroad-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (a), and include recommendation for future implementation of the railroad-highway crossings program.

* * * * * * *

SECTION 2 OF THE EXPORT-IMPORT BANK ACT OF 1945

Sec. 2. (a) * * *

(b)(1)(A) It is the policy of the United States to foster expansion of exports of manufactured goods, agriculatural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income and to the increased development of the productive resources of the United States. To meet this objective, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are competitive with the Government-supported rates and terms and other conditions available for the financing of exports from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing. The Bank shall, on a [semiannual] *annual* basis, report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. Further, the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the [semiannual] *annual* report required by this subparagraph. The Bank shall also include in the [semiannual] *annual* report a description of each loan by the Bank involving the export of any product or service related to the production, refining, or transportation of any type of energy or the development of any energy resource with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

* * * * * * *

SECTION 11 OF THE PUBLIC BUILDINGS ACT OF 1959

SEC. 11. (a) [The Administrator shall submit to Congress each January, promptly after the convening of Congress.] *Upon the request of either House of Congress, or any committee thereof, and within a reasonable time, the Administrator shall submit* a report showing the location, space, cost, and status, of each public building the construction, alteration, or acquisition of which is to be under authority of this Act and which was uncompleted as of the date of the [last preceding report made under this Act.] *request, or as of such other date as the request may designate.*

* * * * * * *

SECTION 108 OF THE MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961

SEC. 108. (a)(1) Whenever the President determines it to be in furtherance of this Act, the functions authorized in section 102(a)(2) and (3) may be performed without regard to such provisions of law or limitations of authority regulating or relating to the making, performance, amendment, or modification of contracts, the acquisition and disposition of property, and the expenditure of Government funds, as he may specify.

(2) Notwithstanding any other provision of law, the Director of the International Communication Agency may provide, on a reimbursable basis, services within the United States in connection with exchange activities otherwise authorized by this Act when such services are requested by a department or executive agency. Reimbursements under this paragraph shall be credited to the applicable appropriation of the Agency.

[(b) The President shall submit annual reports to the Congress of activities carried on and expenditures made in furtherance of the purposes of this Act. Each such report shall include the texts of agreements made with other nations during the period covered by the report, a full description of the program and the funds expended with respect to each country in which activities have been carried on in furtherance of the purposes of this Act.]

(b) The President shall submit periodic reports to the Congress of activities carried on and expenditures made in furtherance of the purposes of this Act and of the United States Information and Educational Exchange Act of 1948, as amended.

* * * * * * *

CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST ACT OF 1960

Chapter VII—Center for Cultural and Technical Interchange Between East and West

* * * * * * *

Sec. 704. (a) In carrying out the provisions of this chapter, the Secretary may utilize his authority under the provisions of the United States Information and Educational Exchange Act of 1948, as amended.

(b) The Secretary may, in administering the provisions of this chapter, accept from public and private sources money and property to be utilized in carrying out the purposes and functions of the Center. In utilizing any gifts, bequests, or devises accepted there shall be available to the Secretary the same authorities as are available to him in accepting and utilizing gifts, bequests, and devises to the Foreign Service Institute under the provisions of the title X, part C of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted by the Secretary under the authority of this chapter shall be deemed to be a gift, devise, or bequest to or for the use of the United States.

[(c) The Secretary shall make an annual report to the Congress with respect to his activities under the provisions of this chapter, and such report shall include any recommendations for needed revisions in this chapter.]

(c) The Director of the International Communication Agency shall make periodic reports, as he deems necessary, to the Congress with re-

spect to his activities under the provisions of this chapter, and such reports shall include any recommendations for needed revisions in this chapter.

*　　*　　*　　*　　*　　*　　*

Section 3 of the National Labor Relations Act

NATIONAL LABOR RELATIONS BOARD

Sec. 3. (a)

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President [stating in detail the cases it has heard, the decisions it has rendered, and an account of all moneys it has disbursed *summarizing significant case activities and operations for that fiscal year.*]

*　　*　　*　　*　　*　　*　　*

Section 408 of the Agricultural Trade Development and Assistance Act of 1954

Sec. 408. (a) The President shall make a report to Congress not later than April 1 each year with respect to the activities carried out under this Act during the preceding fiscal year. Such report shall describe the progress of each country with which agreements are in effect under title I in carrying out its agreements under such title.

(b) Not later than September 30 of each year, the President shall submit to the Congress a report containing a global assessment of food production and needs and setting forth planned programing of food assistance under title I for the coming fiscal year. Not later than December 31, [March 31,] and June 30 of each year, the President shall submit a report to the Congress showing the current status of planned programing of food assistance under title I for the current fiscal year.

*　　*　　*　　*　　*　　*　　*

Act of March 3, 1887

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-eight, and for other purposes

*　　*　　*　　*　　*　　*　　*

Steam-vessels, food-fishes: For new boilers and for a thorough repair and refitting of the steamer Fish Hawk, eleven thousand five hundred dollars.

[That the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall submit to Congress at its next session a detailed statement of the expenditures for the fiscal year eighteen hundred and eighty-seven under all appropriations for "Propagtion of food-fishes;" and annually thereafter a detailed statement of expenditures under all appropriaitons for "Propagation of food-fishes" shall be submitted to Congress at the beginning of each session thereof.]

Sec. 1812. The Chief of Engineers shall, as Superintendent of Public Buildings and Grounds, and as Superintendent of the Washington Aqueduct, annually submit the following reports to the Secretary of War [in time to accompany the annual message of the President to Congress, namely] *within nine months after the end of a fiscal year*:

First. A report of [his] *the Chief Engineers* operations for [the preceding] *that* year, with an account of the manner in which all appropriations for public buildings and grounds have been applied, including a statement of the number of public lots sold, or remaining unsold each year, of the condition of the public buildings and grounds, and of the measures necessary to be taken for the care and preservation of all public property under [his] *the Chief of Engineers'* charge.

Second. A report of the condition, progress, repairs, casualties, and expenditures of the Washington Aqueduct and other public works under his charge.

Sec. 4396. The commissioner of fish and fisheries shall prosecute investigations and inquiries on the subject, with the views of ascertaining whether any and what diminution in the number of the food-fishes of the coast and the lakes of the United States has taken place; and, if so, to what causes the same is due; and also whether any and what protective, prohibitory, or precautionary measures should be adopted in the premises[; and shall report upon the same to Congress].

○

Calendar No. 390

96TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
No. 96–1269

IN THE MATTER OF BILLY CARTER

REPORT

OF THE

SELECT COMMITTEE ON INTELLIGENCE U.S. HOUSE OF REPRESENTATIVES

AUGUST 28, 1980.—Referred to the House Calendar
and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
59–008 O WASHINGTON : 1980

LETTER OF SUBMITTAL

U.S. House of Representatives,
Permanent Select Committee on Intelligence,
Washington, D.C., *August 28 1980.*

Hon. Thomas P. O'Neill, Jr.,
Speaker of the House,
Washington, D.C.

Dear Mr. Speaker: At the direction of the Permanent Select Committee on Intelligence, I hereby submit the following report.

With every good wish, I am

Sincerely yours,

Edward P. Boland, *Chairman.*

Enclosure.

Calendar No. 390

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1269

IN THE MATTER OF BILLY CARTER

AUGUST 28, 1980.—Referred to the House Calendar and ordered to be printed

Mr. BOLAND, from the Permanent Select Committee on Intelligence, submitted the following

REPORT

[In relation to the matter requested in H. Res. 745]

The Permanent Select Committee on Intelligence has examined classified material touching on the relationship between the Government of Libya and Billy Carter and his affairs. The Committee received material of this nature from the White House, the Department of State, the Department of Justice, the Federal Bureau of Investigation, and the entire intelligence community. The materials examined by the Committee date from February 1978, until early August 1980.

The Committee conducted a thorough review of all the classified material provided to it. The Committee decided to issue an unclassified report which responds to the questions raised by House Resolution 745, as reported by the Committees on the Judiciary and Foreign Affairs.

The Committee wishes to note at the outset that its report reflects examination of only the classified material dealing with Billy Carter and his affairs. Further, the body of the Committee's report does not draw conclusions or make judgments. It simply describes the substance of the classified material provided to the Committee in a way that protects sensitive intelligence sources and methods and ongoing government investigations.

This report does not represent an investigation of Billy Carter or his affairs. The Committee's endeavors were directed at securing and reviewing the classified material in the possession of the government concerning Billy Carter and his affairs. However, the Committee examination of the classified material provided to it raises a number of unresolved issues in the Billy Carter case. The committee is concerned that these matters receive attention and will communicate its concern by secure channels to appropriate investigatory bodies in the executive and legislative branches.

REPORT

(Numeric indicators refer to the questions in House Resolution 745.)

No classified material provided to the committee responds to questions (1), (5), (9), (10), (11), or (13).

(2) Classified material provided to the Committee indicates that a White House staff member was kept routinely apprised by the State Department of developments relating to Billy Carter and that, after having been apprised of the paucity of information of a negative nature, this staff member advised an official of the State Department to follow routine procedures in responding to the Justice Department's request for all documents relating to Billy Carter's activities in Libya and United States aircraft sales to that country.

(3) and (6) Classified material provided to the Committee indicates that the White House made clear to the State Department, prior to Billy Carter's second (September 1979) visit to Libya, that the visit was to be viewed as entirely private and that assistance was to be provided to Billy Carter only as appropriate for a private visitor, so as to maintain a low profile for the trip.

(4) Classified material available to the Committee indicates that Dr. Brzezinski learned in March 1980 of Billy Carter's effort to secure an increased oil allocation for Charter Oil from Libya. This is the same information which Dr. Brzezinski has publicly stated that he summarized to the President.

(7) Classified material provided to the Committee indicates that throughout 1979 the White House and foreign policy officials were very aware of the unfavorable publicity from Billy Carter's first trip to Libya. Further, State Department officials were aware that the White House, in March 1979, objected to senior level diplomats visiting Libya because of fears that such visits might be attributed by the press to Billy Carter's influence and that Libya might interpret any change in United States-Libyan relations to Billy Carter rather than the Libyans' own actions and conduct.

The classified material also reflects the belief of State Department officials that in March and April 1979, the White House was concerned that the sale of Boeing 747's to Libya would be misinterpreted as the product of Billy Carter's influence; and the belief of Commerce Department officials that officials in the State Department believed that the White House might force cancellation of the sale for this reason.

Finally, the classified material reflects White House concern in July 1979, when it was learned that Billy Carter would travel again to Libya.

(8) Classified material provided to the Committee from the Justice Department's file on Billy Carter's activities confirms contacts between Billy Carter and his representative, Randy Coleman, and the Libyan Government concerning oil allocations for the Charter Oil Company.

Classified material also indicates Billy Carter's receipt of sums of money from the Libyan Government but there are conflicts on the amounts involved. This classified material also suggests that some of Billy Carter's activities may have been undertaken on behalf of the Government of Libya.

(12) Classified material provided to the Committee indicates that meetings occurred involving the President and Dr. Brzezinski with a representative of the Libyan Government after Billy Carter helped arrange a meeting between the President and the head of the Libyan diplomatic mission in connection with the hostages in Iran, but this material makes no mention of Billy Carter.

CONCLUSION

The Permanent Select Committee on Intelligence believes that the Executive Branch's provision of classified material to the Committee has complied substantially with the requests of House Resolution 745 in this regard. Inasmuch as the material has been provided in several successive increments, however, the Committee recognizes the possibility that additional classified material may develop which may require the careful examination of the Committee.

The Committee also recognizes that the Department of Justice is continuing some elements of its investigation of certain activities of Billy Carter, including an internal inquiry into how the matter was handled within the Department. In addition, the Committee notes that a special subcommittee of the Senate is inquiring into the matter of Billy Carter. As the Committee has identified a number of unresolved issues in this case, it encourages their resolution within the parameters of these ongoing investigations.

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96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1270

CITY OF FAIRFAX

August 28, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Harris, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2170]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2170) to provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The bill would pay $41,958.78 to the city of Fairfax, Va., for the legal expenses incurred defending itself in an action arising out of a 1971 entry into and search of a private building in the city by employees of the Federal Government.

STATEMENT

The information supplied to the committee in connecton with the bill establishes that in 1971, the Central Intelligence Agency contacted officers in the police department of the city of Fairfax, Va., and requested the assistance of the city police in establishing surveillance of a private building in the city. It was indicated that the matter involved a threat to national security and a suspected breach of the Agency's internal security. City police officers were detailed to assist the CIA.

Later in 1971, the CIA advised city police that Federal employees intended to enter the premises under surveillance and conduct a search. City police officers cooperated with the CIA. Employees of the Federal Government made the entry and search without incident and the CIA did not contact the city after that time.

In 1975, the actions of the CIA and the city police officers were made public in the Rockefeller Commission Report. As a result, the city and some of its employees were named as defendants in the case *Orlando Nunez de Villaricencio y del Torro, et al.* v. *Fairfax City, et al.*, Civil Action No. 76–133–A (U.S.D.C. E.D. Va.). On July 27, 1977, the case was decided in favor of the city and its employees, based upon their good faith belief in the propriety of their actions.

The city ultimately bore the legal expenses of all city defendants, amounting to $41,958.78. The Department of Justice did not provide representation to the city or its employees as such representation would have invalidated the city's liability insurance coverage.

The Department of Justice in its report to the committee on the bill has indicated that Federal reimbursement to the city is appropriate and has no objection to the enactment of H.R. 2170. In that report, the Justice Department recognized that the city was forced to retain attorneys because of requirements imposed by the insurance carrier who provided the insurance coverage protecting the city against liability for any adverse judgment. Because of this and the Federal Government's role in the acts giving rise to the suit, the Department indicated it would not oppose relief.

The committee has concluded that the facts and equities of this case merit legislative relief as provided for in the bill and recommends that the bill be considered favorably.

Statements under clause 2(l)(3)(A), clause 2(l)(3)(B), clause 2(l)(2)(B), clause 2(l)(3)(D), clause 2(l)(4), and clause 2(l)(3)(C) of rule XI and clause 7(a)(1) of rule XIII of the House of Representatives.

COST (RULE XIII (7)(A)(1))

As is stated in the letter from the Congressional Budget Office, this bill would authorize the appropriation of $41,959 for fiscal year 1981 for payment by the Secretary of the Treasury to the city of Fairfax. Assuming appropriation of the authorized amount, the cost to the Government would be $41,959 in fiscal year 1981.

OVERSIGHT STATEMENT (RULE XI 2(l)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility in accordance with rule VI(b) of rules of the Committee on the Judiciary with reference to statutes dealing with claims. The favorable consideration of this bill was recommended by that sub-committee, and the committee has determined that legislation should be enacted as set forth in this bill.

BUDGET STATEMENT (RULE XI 2(l)(3)(B))

Enactment of the bill would create an additional cost of $41,959 to the Government pursuant to rule XIII (7)(a)(1). The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by clause 2(1)(3)(B) of rule XI.

COMMITTEE VOTE (RULE XI 2(l)(2)(B))

On August 26, 1980, the full Committee on the Judiciary approved the bill H.R. 2170 by voice vote.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS (RULE XI 2(l)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(l)(3) of House rule XI.

INFLATIONARY IMPACT (RULE XI 2(l)(4))

In compliance with clause 2(l)(4) of House rule XI, it is stated that this legislation will have no inflationary impact on prices and costs on the operation of the national economy.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE (RULE XI 2(l)(3)(C))

The following estimate was received from the Director of the Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 27, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 2170, a bill to provide for the reimbursement of legal expenses incurred by the City of Fairfax with respect to a 1971 entry and search by employees of the Federal Government, as ordered reported by the House Committee on the Judiciary, August 26, 1980.

This bill would authorize the appropriation of $41,959 for fiscal year 1981 for payment by the Secretary of the Treasury to the City of Fairfax. Assuming appropriation of the authorized amount, the cost to the Government would be $41,959 in fiscal year 1981.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES L. BLUM
(For Alice M. Rivlin, Director).

U.S. DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL, LEGISLATIVE AFFAIRS,
Washington, D.C., April 16, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This will respond to your July 17, 1979 letter to Attorney General Bell seeking the Department's views on H.R. 2170, a bill to provide reimbursement of legal expenses incurred by the city of Fairfax, Va., with respect to a 1971 entry and search by employees of the Federal Government.

H.R. 2170 would reimburse the city of Fairfax for legal expenses incurred in the defense of *Orlando Nunez de Villavicencio y del Toro, et al.* v. *Fairfax City, et al.*, Civil No. 76-13-3091 (USDC ED Va.).

The city of Fairfax was named a defendant in the suit as a result of its decision to provide assistance to the Central Intelligence Agency in the course of an intelligence collection operation. Several months earlier, the United States had been sued in a companion case brought by the plaintiffs in the District Court for the District of Columbia in which Justice Department attorneys undertook the defense of the United States.

In light of the pendency of both actions involving similar issues, the fact that departmental attorneys were already involved in one case, and the fact that the Fairfax City defendants would not have been sued but for the assistance they gave the Central Intelligence Agency, the Department of Justice offered to provide direct representation through its own attorneys to the private defendants in the *Nunez* suit. At the time of our offer, the city of Fairfax and its defendant-employees had already retained private counsel. At a meeting with Department representatives on May 13, 1976, to clarify the terms underlying the Department's offer of representation, the Fairfax defendants were advised that if the Justice Department assumed the representation of their interests, then (1) Department attorneys would control all litigation decisions in the case, (2) neither the Department nor the U.S. Government would be responsible for the expense of any other attorneys' services engaged by the city and its employees, and (3) neither the Department nor the United States would be responsible for paying or indemnifying any part of an adverse judgment entered against the city or its employees.

The last condition respecting the Federal Government's inability to indemnify for payment of an adverse judgment was particularly troubling to the private attorney representing the city's insurance carrier. He indicated, in fact, that unless the Department was prepared to reimburse the defendants for any adverse judgment, he could not recommend to the carrier that it allow the city's interests to be represented by departmental attorneys. The remaining attorneys representing the individually-sued defendants expressed similar sentiments with respect to the advice they would give their respective clients. Following the May 13 meeting, the city declined the Justice Department's offer of representation on behalf of all the individually-sued defendants.

The city attorney later advised us that among the considerations weighing in favor of the defendants' decision to decline our offer of representation was that such representation would have adversely affected the insurance coverage provided to the city thus making it potentially and directly liable for the $24 million judgment sought by plaintiffs, an amount which represented the city's total revenue for nearly 2 years.

When a Federal employee declines direct departmental representation for whatever reason, it is the Department's normal policy not to provide private counsel at Government expense. In *Nunez*, the decision to decline Justice representation was precipitated not by the defendants themselves but, rather, by attorneys for the city's insurance carrier. Since the carrier presumably stood as an alternate source of indemnification if the Justice Department declined, as it did, to assume the responsibility, the city of Fairfax and the individually-sued defendants were likely motivated by strong financial considerations in their decision to decline the Department's offer of direct representation. This being the presumptive case, and the city and its co-defendants being the subjects of litigation only because of their willingness to volunteer assistance in an unusual and delicate foreign intelligence operation, the Department believes it appropriate that Federal reimbursement be provided to the city of Fairfax for legal expenses incurred in its defense of the referenced litigation. Accordingly, the Department of Justice has no objection to enactment of this legislation.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

Alan A. Parker,
Assistant Attorney General,
Office of Legislative Affairs.

O

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1271

DISTRICT OF COLUMBIA APPROPRIATION BILL, 1981

August 28, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Dixon, from the Committee on Appropriations, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 8061]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for the District of Columbia for the fiscal year ending September 30, 1981.

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SUMMARY OF ESTIMATES AND RECOMMENDATIONS

FEDERAL FUNDS

Budget estimates for Federal funds considered by the Committee for fiscal year 1981 totaled $528,557,100 of which $527,227,000 was included in the Budget of the United States for 1981 (House Document No. 96–246) and $1,330,100 for a special Federal payment for the January 1981 Presidential inauguration was submitted in H. Doc. 96–364 as a budget amendment.

The Committee recommends appropriations in Federal funds totaling $515,702,600 for fiscal year 1981, a reduction of $12,854,500 below the amount requested. The recommendation includes a Federal payment of $296,645,500, a Federal contribution of $52,070,000 to the city's three retirement funds, reimbursement of $8,100,000 for water and sewer services furnished to the Federal government, Federal loans of $157,557,000 for capital outlay, and a special Federal payment of $1,330,100 to cover the costs of support services for the January 1981 Presidential inauguration.

DISTRICT OF COLUMBIA FUNDS

A total of 1,776,811,900 was requested in District of Columbia funds for fiscal year 1981 consisting of $1,520,414,100 in operating expenses and $256,397,800 in capital outlay. These estimates were submitted in the District of Columbia Budget for 1981 printed as House Document No. 96–263 and received by the Congress on February 7, 1980, and as budget amendments which were included in House Document No. 96–364. In addition to proposing changes in the budget request, the amendment converted the method of financing the District government's budget from a cash basis to an accrual basis. The budget recommended by the Committee is on the accrual basis.

Appropriations recommended from District of Columbia funds for fiscal year 1981 total $1,764,957,400 which is $11,854,500 less than requested and consists of $1,517,059,600 in operating expenses and $247,897,800 for capital outlay.

COMPARATIVE SUMMARY OF BILL

The following table summarizes the amounts recommended in the bill compared with appropriations enacted for fiscal year 1980 and budget estimates presented for fiscal year 1981:

COMPARATIVE SUMMARY OF BILL

[Fiscal years]

Agency and item	New budget (obligational) authority, 1980 (to date)	Budget estimates of new obligational authority, 1981	New budget (obligational) authority recommended in bill	Bill compared with—	
				New budget (obligational) authority, 1980 (to date)	Budget estimates of new obligational authority, 1981
(1)	(2)	(3)	(4)	(5)	(6)
FEDERAL FUNDS					
Federal payment	$276,500,000	$301,000,000	$296,645,500	+$20,145,500	−$4,354,500
Police Officers and Fire Fighters', Teachers' and Judges Retirement Fund	52,070,000	52,070,000	52,070,000		
Demonstration Expenses—Inaugural		1,330,100	1,330,100	+1,330,100	
Payment in lieu of reimbursement for water and sewer services to Federal facilities	10,500,000	8,100,000	8,100,000	−2,400,000	
Loans to the District of Columbia for capital outlay	103,870,300	166,057,000	157,557,000	+53,686,700	−8,500,000
Total, Federal funds	442,940,300	528,557,100	515,702,600	+72,762,300	−12,854,500
DISTRICT OF COLUMBIA FUNDS					
Operating expenses	1,426,093,300	1,520,414,100	1,517,059,600	+90,966,300	−3,354,500
Capital outlay	164,347,500	256,397,800	247,897,800	+83,550,300	−8,500,000
Total, District of Columbia funds	1,550,440,800	1,776,811,500	1,764,957,400	+174,516,600	−11,854,500

COMMITTEE ACTION ON ESTIMATES

OPERATING EXPENSES

The District's amended budget for fiscal year 1981 proposed increases of $94,320,080 in operating expenses above 1980 appropriations and a net reduction of 3,202 positions. The Committee recommends a net increase of $90,966,300 which is $3,354,500 below the request. This amount results from (1) selected reductions of $11,791,100 in the increases requested throughout the budget and (2) increases of $8,436,600 above the budget proposed for the police department and the public school system.

Included in the increase of $90,966,300 recommended by the Committee over current year appropriations are funds for two new jobs programs, an increase in day care rates, and an increase in the public assistance caseload. The budget approved by the Committee also supports the city's renewed emphasis on the development of a comprehensive plan for the District of Columbia, the establishment of four significant new housing programs, and increased local contributions to the District's three pension systems. The Committee has also approved funds to cover anticipated cost-of-living salary increases. A significant increase is included in the bill for improved treatment of wastewater to reduce pollutants discharged into the Potomac River from the District's sewage treatment plant. Funds requested to cover increased operating costs and the opening of an additional 3.5 miles of line on the Metrorail system have also been approved.

CAPITAL OUTLAY

The Committee considered requests totaling $256,397,800 for the District's capital improvements program for fiscal year 1981, an increase of $83,550,300 above the 1980 allowance. The Committee's recommendations total $247,897,800, a reduction of $8,500,000 below the request and reflect a reduction of $3 million in the general permanent improvements request and disapproval of the $5.5 million requested to acquire property for a sludge disposal facility. Details of the Committee's recommendations by project are discussed under the heading "Capital Outlay" later in this report.

GENERAL STATEMENT

JURY AND WITNESS FEES

The Committee requests that the Corporation Counsel develop a comprehensive report on jury fees and witness fees in the Courts of the District of Columbia. The report should address present costs and possible modifications, if any, to the current fees which might be desirable in civil or criminal proceedings. A description of jury and witness fee requirements under current law in the District of Columbia should also be included along with information, if readily available, about such fees in other jurisdictions.

COMPREHENSIVE LONG-RANGE PLANNING

The Committee is encouraged by the redevelopment plans and goals expressed by city officials, and is committed to this long-range planning concept as the basis for any fiscal plan presented by the District. The city government's comprehensive long-range planning and economic development parallels the social and economic health of the community and must be given priority by local officials. Serious consideration should be given to consolidating activities and functions wherever possible rather than expanding them by creating new offices or agencies. The Committee received a special briefing at the District building this past May on the city's long-range planning activities, and is recommending a significant increase in funding for the District government's planning efforts in fiscal year 1981. The Committee looks forward to receiving progress reports from time to time and an in-depth briefing during next year's budget hearings.

JUSTIFICATION MATERIAL

The Committee found the budget justifications to be somewhat difficult to use and, in some respects, inconsistent and incomplete. In many cases, explanations were not clear and information concerning amounts and positions available in the base for programs where increases were requested were not included in the documents. The Committee denied increases with ambigious descriptions such as "inflation cost" which did not identify the items and provide specific cost data. The Committee will no longer fund requests which are not clear and which do not fully explain their purpose. The Committee suggests that development of the fiscal year 1982 budget justifications be coordinated with the staffs of the District of Columbia Subcommittees of the House and Senate Committees on Appropriations prior to preparation of the justifications. The Committee expects the justifications to be clear, complete, and consistent, with uniformity in the use of budget terminology and the presentation of requests by agencies, including the public school system and the courts. The Committee requests that the fiscal year 1982 budget for repayment of loans and interest provide detailed information, by agency, showing the amount and date funds were borrowed, the interest rate, the term of the loan, and the specific purpose for which the funds were borrowed.

Repayment of Loans and Interest

The fiscal year 1981 budget amendment proposed a complete change in this appropriation which has been the central account for the repayment of principal and interest on funds borrowed from the Federal Treasury to finance the District's capital outlay program. The District requested that this central account be discontinued in fiscal 1981 and that funds be appropriated to the individual agencies for which the capital facility financed by the borrowing was constructed. This is intended to more clearly identify the costs of programs operated by each agency.

The Committee concurs in this proposal and has included the necessary language earmarking the amounts for repayment of loans and interest under each applicable appropriation heading.

Financial Management System

A total of $38 million, $19 million in Federal funds and $19 million in District funds, as authorized under Public Law 94–399, approved September 4, 1976, as amended, has been appropriated between fiscal years 1976 and 1980 to improve the District government's financial management and accounting systems and to insure appropriate annual audits. In order to accomplish these objectives, first priority was given to designing and implementing a new financial management system (FMS) which was placed in operation on October 1, 1979.

The Committee has reviewed the progress of the implementation of the new system and has attended briefings on FMS by Temporary Commission staff, District officials and others. In the Committee's opinion FMS represents a significant improvement over previously used accounting and budgeting systems and the Committee believes that accounting and budgeting for all resources without excluding special funds, special accounts or Federal grants allows the Mayor, the Council, the Committee and others to see a more complete picture of the city's programs and their costs than has been the case in the past. The Committee is encouraged by the use of this concept, and views the accessibility of "on-line" automated records as an important tool for more precise financial control and better management.

FMS IMPLEMENTATION PROBLEMS

The Committee understands that full implementation of the new FMS has been slower than planned because of a number of problem areas. Problems have been encountered in computer operations which have affected system availability and response time, data entry, processing backlogs, producing reports, and establishing opening account balances for fiscal year 1980. Problems are due, in part, to an ambitious implementation schedule. The implementation time schedule of the FMS was ambitious because almost all components of the FMS were initiated on October 1, 1979 even though training had not been completed, adequate tests of the system had not been performed, written guidance for operating the system was incomplete, and adequate numbers of city personnel with the appropriate skills had not been acquired.

Furthermore, the city staff responsible for operating the system were not sufficiently knowledgeable of FMS because they had not adequately participated in its design and testing.

The Temporary Commission, its contractors, and the city have been working on the problems since the system was implemented on October 1, 1979, and it is the Committee's understanding that the improvements and corrections will be in place by October 1, 1980.

OPERATION OF FMS

It is essential that the city and the Temporary Commission undertake the initiative to prepare the city for assumption of the overall operation and management of the FMS. At the present time the city receives substantial ongoing assistance from contractors in most areas including computer operations, computer programming, and report generation. Successful operation of the FMS will depend on the orderly assumption of responsibilities by the city for management of the system.

The Committee is very concerned that the city may not be adequately prepared to make full and proper use of this system.

Training.—One of the most important, if not the most important, areas of work to be done for successful FMS implementation is in the area of training. The Committee understands that almost all aspects of the new FMS could benefit from additional training. This includes computer operations, data base management, use of specific system components, such as accounting, budgeting, management of the system, and use of reports generated by the system.

The Committee strongly urges the Temporary Commission and the city to determine specific training needs, develop a training program, and provide training on a priority basis. Special consideration should be given to training of executive level managers, department heads and bureau chiefs, and program managers since city managers must be aware at all times of their organization's financial status and further, must provide day-to-day direction for improved financial control. Since the FMS was designed to provide summary financial reports to program managers on a regular basis, program managers should be provided training so that full use is made of financial reports available on the activities they manage.

Staffing.—Although some progress has been made, the Committee understands that the District still does not have enough personnel with the necessary skills to operate the system. The Committee believes that the city should immediately determine the positions that it will not be able to fill before October 1, 1980, so that competitive procurement procedures can be followed to obtain the necessary contractor support needed on and subsequent to that date.

Written guidance.—The Committee understands that the Temporary Commission's contractors still have not prepared the documentation needed by the District to maintain and operate the system. In addition, the documentation needed by the General Accounting Office to approve the system as required by the authorizing legislation has not been prepared. Although the Temporary Commission has indicated that all of the needed documentation will be prepared, the Committee urges that this effort be given a high priority. Documentation is needed for the city to maintain and operate the system in an effective manner and for the General Accounting Office to evaluate the system. The General Accounting Office's evaluation should answer once and for all whether the system was properly designed.

COMMITTEE'S SUPPORT OF FMS

The Committee strongly supports full implementation of the new FMS system. The city is faced with a challenge in the development of new financial management methods, and although the system may have been implemented prematurely, the District government must now mount an intensive effort to assume management of the FMS if it is to become, in reality, the management tool it was designed to be. This is a significant challenge, more so now because of the current budget balance problems. In effect, District officials must apply sufficient resources to the system to make it work and concurrently manage a fiscal crisis. The Committee's conclusion is that the application of the resources necessary to take full advantage of the features of FMS is a wise investment because when it is fully implemented, FMS will substantially assist in identifying fiscal problems before they reach the crisis stage.

Because of the importance of the FMS and the adverse impact and ripple effect of changes to the system, the Committee directs District officials to advise and consult with the General Accounting Office prior to making any changes to the system after September 30, 1980. Any changes not agreed to by the General Accounting Office are to be reported to the Committee by the District government prior to their implementation.

COMPREHENSIVE FINANCIAL PLANNING

The Committee has monitored the current fiscal crisis of the city very closely. District officials and staff have provided information on cashflow and budget problems. The Committee understands the city is being assisted in analyzing its financial problems by audit firms and financial advisors, and believes that such assistance provides new insight for assessing the current financial health of the city. Preparation of timely and accurate financial reports is an effort which should be undertaken by city staff on a continuing basis. The city needs a good "picture" of its financial status not only for past accounting periods but also to measure financial performance on a current basis.

The Committee is concerned, however, that an important aspect of the current crisis is being overlooked. This area relates to comprehensive financial planning on the part of the city. The Committee, and its counterpart in the Senate, review the city's annual operating and capital budgets with a focus on appropriations supported by local current taxes, fees, charges and the annual Federal payment. This focus relative to items supported by local taxes and the Federal payment is also evident in the District's budget process at the local level where the Mayor submits an "appropriated" budget request to the Council for review and enactment. This focus has evolved over the years and there is nothing inherently wrong in it if all other funds are managed properly.

This focus, however, places almost all emphasis in terms of budget analysis, review and justification on one area of the city's budget and financial picture. Over the years the growing area of Federal grants and special "off-budget" financial activity has received less priority. Federal grants and other accounts at the city level have been managed on a decentralized basis.

A specific outcome of this process is the fact that the District government has and continues to prepare a "financial plan" for "appropriated" funds. This plan is not related to other funds or accounts such as Federal grants and reimbursements. Yet the city must manage its revenue and spending on a comprehensive basis so that all sources of revenue and all expenditure areas are addressed.

The Committee is especially concerned that problems in the management of Federal grants and other non-appropriated funds are a major contributory cause of current problems. Recent financial analysis has indicated that grant-funded programs and other off-budget accounts have contributed substantially to cash flow and budget problems. It is now increasingly clear that taxes for support of appropriated budget authority have essentially off-set under-collection of grant revenues and over-obligation of grant budgets.

The Committee believes that an aspect of budget analysis which has contributed to this problem and which should be addressed is the presentation of a "financial plan" to support the budget which only addresses appropriated funds. There is no financial plan for the total expenditures and revenues of the District government. The city should develop an annual financial plan which addresses all expenditures and sources of funding in the operating and capital budgets. Section 443 of the Home Rule Charter (Public Law 93–198) requires the Mayor to prepare and include a multiyear plan encompassing all sources of funding. The Committee understands that the city has not prepared this plan in the past because its financial management systems did not produce the information that was required. The Committee believes that the new Financial Management System (FMS) will support development of a financial plan which includes all revenues and expenditures. Available contractual assistance should be used, as appropriate, as a resource to develop annual cash-flow, revenue and financial plan statements which address all sources of funding.

The Committee as well as the Mayor, the Council, and District taxpayers should be fully cognizant of the city's overall financial balance when analyzing the annual appropriations requirements. Accordingly, the Committee requests that the multiyear plan required by section 443 of the Home Rule Charter be prepared and submitted with the fiscal year 1982 budget.

ORGANIZATIONS EXEMPT FROM REAL ESTATE TAXES

In last year's report, the Committee expressed concern about the number of organizations in the District of Columbia that do not pay real estate taxes to the city government because of tax exemptions granted by special acts of Congress. The assessed valuation of the 31 properties involved is $137.5 million and the potential annual tax liability is $2.5 million. At a time when the District government is anxious to increase available tax revenue with which to reduce its reported $125 million operating deficit for the current year, these exempt properties should be among the first to receive special review.

These organizations were granted tax exempt status based upon their charter at the time the exemption was granted. The Committee believes that over the years some of these organizations may have changed their orientations and by-laws to such an extent that their tax exempt status should be carefully reviewed and, if warranted, the organizations should be taxed by the District government.

The Committee notes that Congress has never granted a real estate tax exemption to any organization in the District of Columbia that engages in union organizing or political activities, including endorsements of political candidates and contributions to candidates for public office. The Committee feels that any organization involved in such activities should be placed on the tax rolls and assessed taxes on the same basis as similar organizations. If necessary, the District government should seek Congressional repeal of applicable tax exemptions.

SIX-YEAR CAPITAL IMPROVEMENTS PLAN

The Committee notes that the District government did not present a detailed Six-Year Capital Improvements Program along the lines submitted in the past. Although the city has provided an analysis of the projected financial impact of projects under construction and new starts proposed in the fiscal year 1981 budget, future project needs have not been identified and their fiscal implications have not been adequately assessed. Thus, the Committee is unable to evaluate project requests in the context of the city's long-term needs.

It is understandable that during its first year the new administration would want to analyze the current condition of the infrastructure and public facilities in the city before developing a comprehensive plan for addressing unmet physical needs during the 1980's. But this kind of review should now be completed and the results translated into a detailed agenda of improvements that will form the basis for budget requests over the next six years.

The city is well aware of the Committee's interest in focusing attention on long-range planning issues. During the 1981 budget review the Committee requested a special briefing to give the city an opportunity to offer concrete proposals on a variety of important issues facing the city in the years ahead. Against this backdrop, the Committee believes that future capital requests should be considered and approved in accordance with the goals and project needs set forth in the Six-Year Capital Improvements Plan.

TOTAL RESOURCES

Based on recommendations in the bill, a total of $2,258,417,800 and 42,545 positions will be available to the District of Columbia government during the next fiscal year. Included in this figure are appropriations from District funds recommended in the accompanying bill, as well as Federal and other grants and reimbursements. The financing of appropriations from District funds is from the Federal payment, Federal revenue sharing and revenues from various local taxes, fees, charges and other collections received by the District government.

A summary of the total resources by appropriation title follows:

TOTAL ESTIMATED RESOURCES AVAILABLE TO DISTRICT OF COLUMBIA, FISCAL YEAR 1981

Item	Recommended in bill (District of Columbia funds)		Federal grants		Grants, reimbursements, and other		Total resources	
	Positions	Amount	Positions	Amount	Positions	Amount	Positions	Amount
OPERATING EXPENSES								
Governmental direction and support	2,106	$82,178,400	261	$573,300	4	$757,900	2,371	$83,509,600
Economic development and regulation	760	27,995,000	1,095	50,820,500	4	14,292,500	1,859	93,108,000
Public safety and justice	9,178	342,696,100	146	689,300	30	2,813,500	9,354	346,198,900
Public education system	10,696	392,245,100	1,616	53,639,900	15	3,162,900	12,327	449,047,900
Human support services	5,699	375,082,200	2,954	190,895,100	1	114,473,900	8,654	680,451,200
Transportation services and assistance	789	147,150,800	50	2,946,400	47	3,671,300	886	153,768,500
Environmental services and supply	1,470	41,960,400	149	898,800	14	2,305,500	1,633	45,164,700
Personal services		25,305,300						25,305,300
Inaugural expenses		1,330,100						1,330,100
Water and sewer enterprise fund	1,153	81,116,200		100,300		4,000,200	1,153	85,216,700
D.C. General Hospital (positions)	2,356						2,356	
Total, operating expenses	34,207	1,517,059,600	6,271	300,563,600	115	145,477,700	40,593	1,963,100,900
Capital outlay		247,897,800		47,419,100				295,316,900
Intra-District positions	1,952						1,952	
Grand total	36,159	1,764,957,400	6,271	347,982,700	115	145,477,700	42,545	2,258,417,800

FEDERAL FUNDS

A total of $1,015,096,100 in Federal funds will be available to the District of Columbia government during fiscal year 1981. Included in this total are the Federal payment, the Federal contribution to local pension funds, and a special payment for inaugural expenses. The bill also includes a Federal payment for water and sewer services furnished to Federal facilities and Federal loans to finance the city's construction program. Other Federal funds will be received by the District from the general revenue sharing program as well as various Federal grant programs. In addition, Federal reimbursements are received from such programs as medicaid and medicare.

The following table summarizes the various Federal funds estimated to be available to the District government during fiscal year 1981:

Federal funds

Item	*Amount*
Federal payment	$296,645,500
Federal contribution to police officers, fire fighters, teachers and judges retirement funds	52,070,000
Federal payment for inaugural expenses	1,330,100
Payment in lieu of reimbursement for water and sewer services to Federal facilities	8,100,000
Federal loans for capital outlay	157,557,000
Federal revenue sharing	26,300,000
Subtotal (Federal funds included in this bill)	542,002,600
Federal grants	347,982,700
Federal reimbursements	125,110,800
Total, Federal funds	1,015,096,100

FEDERAL FUNDS INCLUDED IN BILL

The bill includes Federal funds totaling $515,702,600 for fiscal year 81 which is $12,854,500 less than requested and $72,762,300 above e 1980 level. These amounts exclude revenue sharing funds totaling 6,300,000.

The following table summarizes the requests and the amounts recomended in the bill:

FEDERAL FUNDS INCLUDED IN BILL

Item	Appropriation 1980 (to date)	Estimate, fiscal year 1981	Recommended, fiscal year 1981
leral payment	$276, 500, 000	$301, 000, 000	$296, 645, 500
leral contribution to police officers, firefighters, teachers and udges retirement fund	52, 070, 000	52, 070, 000	52, 070, 000
leral payment for inaugural expenses		1, 330, 100	1, 330, 100
yment in lieu of reimbursement for water and sewer services to Federal facilities	10, 500, 000	8, 100, 000	8, 100, 000
leral loans for capital outlay	103, 870, 300	166, 057, 000	157, 557, 000
Total	442, 940, 300	528, 557, 100	515, 702, 600

FEDERAL PAYMENT

The Committee recommends a Federal payment of $296,645,500 for scal year 1981, which is $4,354,500 less than requested and $20,145,500 r 7.3 percent above the $276,500,000 appropriated for fiscal year 1980. he Federal payment is authorized at $300 million annually by Public aw 93–395, approved August 29, 1974.

The Federal payment of $296,645,500 recommended in the bill is 4.7 percent of the anticipated local collections for fiscal year 1981.

A table showing the Federal payment and its relationship to local evenue collections for fiscal years 1951 through 1981 follows:

FEDERAL PAYMENT COMPARED TO DISTRICT OF COLUMBIA GENERAL REVENUE LOCAL COLLECTIONS
[Dollar amounts in thousands]

Fiscal year	Federal payment appropriated (general funds)	General revenue collections	Federal payment as a percentage of general revenue local collections
951	$9, 800	$97, 866	10. 0
952	10, 400	102, 398	10. 2
953	10, 000	104, 832	9. 5
954	11, 000	105, 456	10. 4
955	20, 000	114, 808	17. 4
956	18, 000	122, 302	14. 7
957	20, 000	137, 280	14. 6
958	20, 000	144, 745	13. 8
959	25, 000	149, 751	16. 7
960	25, 000	162, 888	15. 3
961	25, 000	167, 986	14. 9
962	30, 000	181, 615	16. 5
963	30, 000	205, 298	14. 6
964	37, 500	215, 804	17. 4
965	37, 500	230, 995	16. 2
966	44, 250	256, 398	17. 3
967	58, 000	272, 906	21. 3
968	70, 000	301, 767	23. 2
1969	89, 365	341, 033	26. 2
1970	116, 166	388, 542	29. 9
1971	131, 000	432, 010	30. 3
1972	173, 654	458, 523	37. 9
1973	181, 500	505, 276	35. 9
1974	137, 450	534, 253	35. 1
1975	226, 200	554, 222	40. 8
1976	248, 949	628, 245	39. 6
Transition quarter	66, 138	199, 652	33. 1
1977	[1] 276, 000	754, 447	36. 6
1978	276, 000	880, 699	31. 3
1979	250, 000	938, 100	26. 6
1980	276, 500	1, 036, 648	26. 7
1981 estimate	300, 000	1, 198, 770	25. 0
1981 recommended	296, 646	1, 198, 770	24. 7

DISTRICT OF COLUMBIA LOCAL COLLECTIONS

The District estimates it will collect a total of $1,198,770,000 in local revenues in fiscal year 1981 from various taxes, fees, and charges. The collections in 1981 are expected to be $162,122,000 higher than the fiscal year 1980 collections.

A summary of these revenues comparing fiscal years 1980 and 1981 by source follows:

District of Columbia local collections

[Dollar amounts in thousands]

Item	Fiscal year 1980	Fiscal year 1981	Increase/decrease
General revenues:			
Property taxes	$213, 600	$255, 297	+$41, 697
Sales taxes	324, 823	377, 660	+52, 837
Income taxes	314, 381	334, 955	+20, 574
Other taxes	25, 800	36, 420	+10, 620
Charges and miscellaneous revenues	103, 522	115, 045	+11, 523
Subtotal	982, 126	1, 119, 377	+137, 251
Convention Center revenues	6, 252	5, 940	−312
Water and sewer enterprise fund	48, 270	73, 453	+25, 183
Total	1, 036, 648	1, 198, 770	+162, 122

HISTORY OF FEDERAL PAYMENT

The Committee is including the usual history of the Federal payment and its relationship to the District's appropriated budget going back to fiscal year 1921. Figures for fiscal years 1921 through 1975 reflect *general fund* appropriations only, while appropriations from 1976 through 1981 are for operating expenses from *all sources* which include the general fund as well as the water and sewer fund.

The history referred to follows:

FEDERAL PAYMENT AND ITS RELATIONSHIP TO GENERAL FUND APPROPRIATIONS

Fiscal year	Total appropriations	District of Columbia share	U.S. share	U.S. share as a percent of total
21	$21,474,271	$12,256,178	$9,218,093	42.92
22	22,977,411	13,784,648	9,192,763	40.00
23	23,833,043	14,430,265	9,402,778	39.45
24	23,903,755	14,463,330	9,440,425	39.49
25	31,175,672	22,030,317	9,145,355	29.33
26	31,139,730	22,139,638	9,000,092	28.90
27	33,951,478	24,950,987	9,000,491	26.51
28	34,894,148	25,892,358	9,001,790	25.79
29	35,957,970	26,957,753	9,000,217	25.03
30	40,694,306	31,694,306	9,000,000	22.12
31	45,625,286	36,125,252	9,500,034	20.82
32	43,840,022	34,339,911	9,500,111	21.67
33	39,626,998	31,851,847	7,775,151	19.62
34	29,700,737	24,000,708	5,700,029	19.19
35	34,620,004	30,080,709	4,539,295	13.11
936	38,295,953	32,588,424	5,707,529	14.90
937	40,182,768	35,177,768	5,005,000	12.46
938	41,143,818	36,118,792	5,025,026	12.21
939	40,494,451	35,494,451	5,000,000	12.35
940	41,777,885	35,777,768	6,000,117	14.36
941	43,136,909	37,136,909	6,000,000	13.91
942	47,401,269	41,401,269	6,000,000	12.66
943	49,422,932	43,422,932	6,000,000	12.14
944	54,642,247	48,642,247	6,000,000	10.98
945	62,599,125	56,599,125	6,000,000	9.58
946	64,728,423	58,728,423	6,000,000	9.27
947	72,584,314	64,584,314	8,000,000	11.02
948	81,744,086	70,744,086	11,000,000	13.45
949	86,017,985	75,017,985	11,000,000	12.79
950	98,331,275	87,331,275	11,000,000	11.19
951	103,924,822	94,124,822	9,800,000	9.43
952	121,265,978	110,865,978	10,400,000	8.58
953	113,589,327	103,589,327	10,000,000	8.80
954	129,111,304	118,111,304	11,000,000	8.52
955	139,578,760	119,578,760	20,000,000	14.33
1956	143,179,303	125,179,303	18,000,000	12.57
1957	155,579,025	135,579,025	20,000,000	12.86
1958	166,096,999	146,096,999	20,000,000	12.04
1959	185,915,914	160,915,914	25,000,000	13.45
1960	199,806,074	174,806,074	25,000,000	12.51
1961	[1] 199,522,707	174,522,707	25,000,000	12.52
1962	209,571,780	179,571,780	30,000,000	14.31
1963	224,594,494	194,594,494	30,000,000	13.35
1964	240,934,361	203,434,361	37,500,000	15.56
1965	265,062,212	227,562,212	37,500,000	14.14
1966	285,093,147	240,843,147	44,250,000	15.52
1967	318,057,766	260,057,766	58,000,000	18.23
1968	371,269,747	301,269,747	70,000,000	18.85
1969	435,474,907	346,109,907	89,365,000	20.52
1970	528,960,521	412,794,521	[2] 116,166,000	21.96
1971	591,262,769	460,262,769	[3] 131,000,000	22.15
1972	641,466,600	467,812,600	173,654,000	27.07
1973	718,091,300	536,591,300	181,500,000	25.28
1974	777,764,647	590,314,647	187,450,000	24.10
1975	845,616,600	619,416,600	226,200,000	26.74
1976	1,042,142,700	793,194,000	248,948,700	23.88
1977	1,130,505,900	853,855,900	276,650,000	24.47
1978	1,260,791,300	984,791,300	276,000,000	21.89
1979	1,335,746,400	1,085,746,400	[4] 250,000,000	18.72
1980	1,426,093,300	1,149,593,300	276,500,000	19.38
1981 Recommended	1,517,059,600	1,220,414,100	296,645,500	19.55

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[1] Excludes appropriations for capital outlay beginning with Fiscal Year 1961.

[2] Includes $5,000,000 as provided in Public Law 91-106 for law enforcement activities in Fiscal Year 1970 only and $8,000,000 as provided in Public Law 91-287 for use in defraying the cost of the retroactive pay increases for policemen, firemen, and teachers.

[3] Includes $5,000,000 as provided in Public Law 91-358 for purpose of the D.C. Court Reform and Criminal Procedures Act of 1970.

[4] Excludes one-time special payment of $9,900,000 for the Federal share of the RFK Stadium bond repayment.

Note: 1921 through 1960 compared to total appropriation for general fund—operating and capital. 1961 through 1975 compared to total appropriation for general fund—operating expenses. 1976 through 1981 compared to total appropriation for operating expenses—all sources.

FEDERAL CONTRIBUTION TO PENSION FUNDS

The Committee recommends approval of the Federal contribution of $52,070,000 to the Police Officers and Fire Fighters, Teachers and Judges Retirement Funds as authorized by the District of Columbia Retirement Reform Act (Public Law 96–122, approved November 17, 1979). This is the second of 25 annual Federal payments which will total $1.3 billion and will cover a portion of the unfunded liability attributed to former District employees who retired before January 2, 1975 when home rule took effect. The Federal government's contribution will finance 80 percent of the liability for those who took normal service retirements and one-third of the liability for those who retired under disability.

FEDERAL PAYMENT FOR INAUGURAL EXPENSES

A special Federal payment of $1,330,100 is recommended to cover support costs which will be incurred by several District agencies during the Presidential Inauguration scheduled for January 1981. Authorization for this payment is included in section 737(b) of the Home Rule Charter (Public Law 93–198).

PAYMENT FOR FEDERAL WATER AND SEWER SERVICES

A total of $8,100,000 in Federal funds is included in the bill as a payment to the city for water and water services as well as sanitary sewer services furnished to Federal facilities in the District. This amount is the same as the request and $2,400,000 below last year's payment due to adjustments made for prior year billings.

FEDERAL LOANS FOR CAPITAL OUTLAY

The Committee recommends Federal loan appropriations totaling $157,557,000 to finance the city's construction program during fiscal year 1981. This allowance is $8,500,000 less than requested and $53,686,700 above the 1980 level. The construction projects that will be financed with these loans are discussed in detail under the capital outlay heading starting on page 51.

General Revenue Sharing

In addition to participating in the various Federal grant programs, the District also participates in the Federal government's general revenue sharing program. A total of $26,300,000 in revenue sharing funds will be made available to the city during 1981 and language in the bill sets out the specific amounts required for financing programs within the appropriations recommended.

A summary showing Federal revenue sharing funds that will be received by agency follows:

Agency	*Amount*
Metropolitan Police Department	$1, 750, 000
Fire Department	1, 900, 000
Department of Corrections	2, 200, 000
Public Schools	6, 000, 000
School Transit Subsidy	2, 750, 000
Department of Human Resources	8, 200, 000
Department of Transportation	2, 500, 000
Department of Environmental Services	1, 000, 000
Total	26, 300, 000

FEDERAL GRANTS

The District of Columbia participates as a State, county and city in the various Federal grant programs. Funds from these grants are in addition to those included in the accompanying bill. The city is currently estimating that it will receive a total of $347,982,700 in Federal grants during fiscal year 1981.

The following table shows the amount of Federal grants the city expects to receive and the office or agency that expects to receive them:

Summary of Federal Grant Assistance to the District of Columbia

Agency	*1981 estimate*
Governmental Direction and Support:	
Office of the Inspector General	$307, 600
D.C. Office of Personnel	90, 000
Office of Business and Economic Development	175, 700
Total, Governmental Direction and Support	573, 300
Economic Development and Regulation:	
Office of Planning and Development	1, 974, 400
Department of Housing and Community Development	48, 643, 700
Public Service Commission	202, 400
Total, Economic Development and Regulation	50, 820, 500
Public Safety and Justice:	
Office of Emergency Preparedness	253, 500
Board of Parole	40, 000
Office of Criminal Justice Plans and Analysis	395, 800
Total, Public Safety and Justice	689, 300
Public Education System:	
Board of Education (Public Schools)	45, 702, 800
University of the District of Columbia	7, 161, 600
Public Library	410, 500
Commission on the Arts and Humanities	365, 000
Total, Public Education System	53, 639, 900
Human Support Services:	
Office on Human Rights	177, 400
Office on Aging	3, 085, 700
Department of Employment Services	70, 568, 500
Department of Recreation	1, 180, 200
Department of Human Services	115, 707, 100
D.C. General Hospital	176, 200
Total, Human Support Services	190, 895, 100
Transportation Services and Assistance:	
Department of Transportation	2, 946, 400
Environmental Services and Supply:	
Department of Environmental Services (General Fund)	898, 800
Water and Sewer Enterprise Fund (DES)	100, 300
Total, Environmental Services and Supply	999, 100
Total, Operating Expenses	300, 563, 600
Capital Outlay	47, 419, 100
Total	347, 982, 700

ESTIMATED REVENUES

A total of $1,531,146,000 will be available, on the accrual basis, to the District government during fiscal year 1981, consisting of Federal funds as recommended in the bill, income from local taxes, fees and charges and Federal revenue sharing. Revenues totaling $1,198,770,000 from the city's own sources reflect an increase of $4,712,000 over the original estimates prepared at the time the budget was submitted to Congress. The District expects to earn $8,783,000 in revenues for water and sewer services furnished to Federal facilities; however, after making adjustments for prior year billings, the amount requested by the District government and recommended for appropriation in the accompanying bill totals $8,100,000.

BALANCED BUDGET RECOMMENDED

The Committee is recommending a balanced budget on the accrual basis in accordance with the District government's request. As shown in the financial plan that follows, it is estimated that sufficient resources will be available on an accrual basis to finance the operating expenses and debt service requirements recommended in the accompanying bill.

The financial plan referred to follows:

FINANCING PLAN FOR FISCAL YEAR 1981 APPROPRIATED BUDGET

ACCRUAL BASIS

[In thousands]

	General fund	Water and sewer fund	Convention Center fund	Total appropriated budge
FUNDS AVAILABLE				
Revenues—Local sources:				
Current authority	$1,104,607	$58,835	$5,940	$1,169,382
Pending authority	14,770	14,618		29,388
Total, local revenues	1,119,377	73,453	5,940	1,198,770
Revenues—Federal sources:				
Federal payment	296,646	8,100		304,746
Federal payment—inaugural expenses	1,330			1,330
General revenue sharing—local	18,900			18,900
General revenue sharing—State	7,400			7,400
Total, Federal revenues	324,276	8,100		332,376
Total, funds available	1,443,653	81,553	5,940	1,531,146
FUNDS REQUIRED				
Budget recommended	1,433,012	81,116	2,932	1,517,060
Expenses under permanent authority	4,600			4,600
Convention Center mandatory reserve			3,008	3,008
Water and sewer reserve		1,120		1,120
Adjustments, modified accrual to accrual basis	[1] 6,041	[2] (683)		5,358
Total, funds required	1,443,653	81,553	5,940	1,531,146
Closing balance				

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[1] Increase in funds required resulting from expensing the interest portion of debt service on an accrual rather than a cash basis.

[2] Decrease in funds required resulting from recognizing water and sewer revenue from the Federal Government on an earned or estimated annual consumption basis. The recommended appropriation of $8,100,000 is the cash payment due and reflects billing adjustments for actual consumption in prior periods.

PERSONNEL

The Committee recommends a total of 36,159 positions to be financed from District of Columbia appropriated funds during fiscal year 1981 consisting of 34,207 positions under operating expenses and 1,952 intra-District positions. The budget proposed a total of 35,903 and reflected the transfer of 234 positions between agencies, based on priority, and also included funding to fill those transferred positions. The Committee's recommendation is 256 positions above the city's request and reflects the net effect of (1) a reduction of 48 positions in transfers between agencies and (2) the restoration of 304 positions to the budget for the Metropolitan Police Department. These latter positions are not new positions, rather they provide for the continuation of positions already authorized for 1980 and required to maintain the strength of the department at the September 30, 1980 level of 3,880 uniformed officers.

The following table summarizes by agency the positions authorized, requested and recommended for fiscal year 1981:

SUMMARY OF POSITIONS—DISTRICT OF COLUMBIA FUNDS

Activity	Authorized for 1980	Ajustments	1981 base	Increase/decrease	Increase/decrease recommended by committee	Total authorized for 1981
Governmental Direction and Support:						
Council of the District of Columbia	130		130	+4	+4	134
District of Columbia Auditor	12		12			12
Executive Office:						
Office of the Mayor	27		27	−2	−2	25
Office of the Inspector General	20		20	−2	−2	18
Office of the Executive Secretary	39	−1	38	+3	+3	41
Office of the Corporation Counsel	155	−1	154	+11	+11	165
Office of the City Administrator	11	−3	8	+5	+5	13
Office of Intergovernmental Relations	8	+1	9	+1	−1	8
Office of Budget and Resource Development	45	+8	53			53
Office of Financial Management	249	−22	227			227
Office of Personnel	66	+246	312			312
Office of Communications	7		7			7
Office of Business and Economic Development				+18	+9	9
Department of Finance and Revenue	585	−9	576	−24	−24	552
Department of General Services	531	−17	514	−44	−44	470
Board of Appeals and Review and Board of Equalization and Review	4		4			4
Board of Elections and Ethics	33		33	+2	+2	35
Board of Labor Relations	2	−2				
Public Employee Relations Board		+2	2	+2	+2	4
Office of Employee Appeals				+12	+12	12
D.C. Retirement Board				+5	+5	5
Total, Governmental Direction and Support	1,924	+202	2,126	−9	−20	2,106
Economic Development and Regulation:						
Development:						
Office of Planning and Development	75	+5	80	−5	−5	75
Department of Housing and Community Development	262		262	+50	+50	312
Recorder of Deeds	64		64	−9	−9	55
Office of the Surveyor	31		31			31
Minority Business Opportunity Commission	3		3			3
Washington Convention Center				+8	+8	8
Regulation:						
Office of Consumer Protection	14		14	+6		14
Rental Accommodations Office	42		42	+5	+2	44
Department of Licenses, Inspections, and Investigations	161	−7	154	−1	−1	153
Department of Insurance	27		27			27
Public Service Commission	29		29	+7	+4	33
Commission on the Healing Arts Licensure	5		5			5
Total, Economic Development and Regulation	713	−2	711	+61	+49	760

SUMMARY OF POSITIONS—DISTRICT OF COLUMBIA FUNDS—Continued

Activity	Authorized for 1980	Ajustments	1981 base	Increase/ decrease	Increase/ decrease recommended by committee	Total authorized for 1981
Public Safety and Justice:						
Metropolitan Police Department	4,865	−246	4,619	−254	+50	4,669
National Guard	20		20			20
Office of Emergency Preparedness	7		7			7
Fire Department	1,571	−6	1,565	−53	−53	1,512
Court of Appeals	70		70			70
Superior Court	901	−16	885	−10	−10	875
D.C. Court System	64		64			64
Public Defender Service	110		110			110
Pretrial Services Agency	47		47	+1	+1	48
Board of Parole	23		23	+4	+4	27
Commission on Judicial Disabilities and Tenure	1		1			1
Law Revision Commission	3		3			3
Department of Corrections	1,934	−52	1,882	−115	−115	1,767
Office of Criminal Justice Plans and Analysis	5		5			5
Total, Public Safety and Justice	9,621	−320	9,301	−427	−123	9,178
Public Education System:						
Board of Education (Public Schools)	9,655	−3	9,652	−783	−783	8,869
University of the District of Columbia	1,500		1,500	−98	−98	1,402
Public Library	475		475	−55	−55	420
Commission on the Arts and Humanities	3		3	+5		3
Educational Institutional Licensure Commission		+1	1	+1	+1	2
Total, Public Education System	11,633	−2	11,631	−930	−935	10,696
Human Support Services:						
Office of Human Rights	46		46	+7		46
Office on Aging	3		3	+9	+2	5
Office of Latino Affairs	4		4	+6		4
Department of Employment Services	61	−3	58	+28	+28	86
Commission on Women	2		2	+2	+2	4
Department of Recreation	759	−16	743	−153	−153	590
Department of Human Services	6,086	−279	5,807	−843	−843	4,964
Total, Human Support Services	6,961	−298	6,663	−944	−964	5,699
Transportation Services and Assistance:						
Department of Transportation	1,007	−137	870	−81	−81	789
Environmental Services and Supply:						
Department of Environmental Services	1,593	−101	1,492	−22	−22	1,470
Water and Sewer Enterprise Fund:						
Water and Sewer Operations—Department of Environmental Services	1,045	−239	806	+47	+47	853
Washington Aqueduct	300		300			300
Total, Water and Sewer Enterprise Fund	1,345	−239	1,106	+47	+47	1,153
Subtotal	34,797	−897	33,900	−2,305	−2,049	31,851
D.C. General Hospital	2,356		2,356			2,356
Total, operating expenses	37,153	−897	36,256	−2,305	−2,049	34,207
Intra-District positions	1,952		1,952			1,952
Grand total	39,105	−897	38,208	−2,305	−2,049	36,159

EMPLOYMENT CEILING

The Committee recommends an employment ceiling of 35,268 positions which is a net decrease of 2,618 below the 1980 ceiling and 256 above the request for 1981. This increase reflects the net effect of the restoration of 304 police officer positions offset by a reduction of 48 positions in the requests of various agencies. The budget proposed funds for 234 positions which were previously unfunded. The Committee has approved the request to consolidate the reimbursable, revolving fund and capital outlay positions into a new classification of "intra-District" positions. The restriction on the maximum number of positions that may be filled during any one month is carried in section 113 of the general provisions of the bill.

OPERATING EXPENSES

GOVERNMENTAL DIRECTION AND SUPPORT

A total of $82,178,400 is included in the bill for the 22 departments, agencies, and activities funded through this appropriation for fiscal year 1981. The amount recommended is $5,738,100 above current year appropriations and $2,441,500 below the amounts proposed in the 1981 budget.

The allocation of funds by activity is shown in the following tabulation:

GOVERNMENTAL DIRECTION AND SUPPORT

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recommended in bill	Bill compared with— 1980 adjusted (1981 base)	Bill compared with— 1981 estimate
Council of the District of Columbia	$3,625,500	$3,901,600	$3,882,000	+$256,500	−$19,600
District of Columbia Auditor	341,200	347,300	347,300	+6,100	------------
Executive Office	29,052,700	32,649,900	31,009,200	+1,956,500	−1,640,700
Department of Finance and Revenue	13,448,600	14,403,400	14,279,000	+830,400	−124,400
Department of General Services	27,508,400	29,135,800	29,135,800	+1,627,400	------------
Board of Appeals and Review and Board of Equalization and Review	183,900	180,200	180,200	−3,700	------------
Board of Elections and Ethics	1,289,600	1,349,200	1,349,200	+59,600	------------
Public Employee Relations Board	117,100	216,900	216,900	+99,800	------------
Advisory Neighborhood Commissions	625,000	1,360,500	719,000	+94,000	−641,500
Metropolitan Washington Council of Governments	248,300	269,200	253,900	+5,600	−15,300
Office of Employee Appeals	------------	507,700	507,700	+507,700	------------
District of Columbia Retirement Board	------------	298,200	298,200	+298,200	------------
Total	76,440,300	84,619,900	82,178,400	+5,738,100	−2,441,500

COUNCIL OF THE DISTRICT OF COLUMBIA

The Committee recommends a total of $3,882,000 and 134 positions for the operation of the Council in fiscal year 1981. This allowance is $256,500 and four positions above the 1980 level and $19,600 below the 1981 proposal reflecting denial of the request to restore a portion of the one percent reduction applied to the base in fiscal year 1980.

The allowance for fiscal year 1981 includes two additional positions and $55,100 to assist the Council in its work on revising the criminal law titles of the District of Columbia Code (titles 22, 23 and 24). The Council assumed jurisdiction over the criminal law titles on January 2, 1979, and with these two new positions, will have a total of four personnel assigned to this function. The Committee wishes to emphasize that these positions are provided solely for the purpose of revising the criminal code and are not to be used to augment the Council's staff for work in other areas.

An increase of two positions is recommended to establish a central budget staff for the Council. The Committee has been advised that two existing positions will be reassigned within the Council to provide a four-member staff to review and monitor the Council's role in the budget process as well as serve as the Council's chief resource for advice on the District's implementation of the new municipal budgeting and accounting principles and procedures inherent within the financial management system. The Committee has not approved the request for a representation allowance of $300 for each of the twelve Council members.

DISTRICT OF COLUMBIA AUDITOR

The amended request of $347,300 and 12 positions is included in the bill for fiscal year 1981, and reflects an increase of $6,100 above the current year level for annualization costs of a GS–12 position first funded in fiscal year 1980.

EXECUTIVE OFFICE

The Committee recommends a total of $31,009,200 for fiscal year 1981 for the various offices and programs carried within the Executive Office budget.

A comparative summary of the Committee's recommendations by office follows:

EXECUTIVE OFFICE

Agency	Estimate	Recommended	Increase/ decrease
Office of the Mayor	$941, 200	$941, 200	
Office of the Inspector General	596, 000	596, 000	
Office of the Executive Secretary	1, 419, 800	1, 412, 500	−$7, 300
Office of the Corporation Counsel	5, 112, 700	5, 112, 700	
Office of the City Administrator	350, 100	350, 100	
Office of Intergovernmental Relations	312, 900	244, 700	−68, 200
Office of Budget and Resource Development	1, 829, 000	1, 829, 000	
Office of Financial Management	13, 400, 000	12, 200, 000	−1, 200, 000
Office of Personnel	7, 747, 000	7, 747, 000	
Office of Communications	229, 500	220, 100	−9, 400
Office of Business and Economic Development	711, 700	355, 900	−355, 800
Total	32, 649, 900	31, 009, 200	−1, 640, 700

OFFICE OF THE MAYOR

The appropriation of $941,200 and 25 positions is recommended for 1981. The Committee has approved the increase of $24,500 requested for supplies, phone service, reporting services, printing and equipment purchases. The request for an increase of $500, from $2,500 to $3,000, in the Mayor's representation allowance has not been approved.

OFFICE OF THE INSPECTOR GENERAL

The bill includes the amended request of $596,000 and 18 positions for fiscal year 1981 which reflects a base reduction of $4,500 and two positions below the 1980 level.

The Committee is pleased to note the work of the Inspector General in connection with the District's new financial management system, and in particular the Inspector General's recognition of the need to establish a central function to review and monitor contract specifications and contractor performance. The Committee urges the office to continue its oversight activities in this area which is of vital importance to the District.

OFFICE OF THE EXECUTIVE SECRETARY

The sum of $1,412,500 and 41 positions are proposed for fiscal year 1981, an increase of $118,800 and three positions above the 1980 level and $7,300 below the amount requested.

The Committee has approved an increase of $103,400 and two positions for the new Office of Documents which was created by District of Columbia Law 2–319 to direct the preparation and public distribution of all legal publications of the District of Columbia government, including the District of Columbia Statutes-at-Large, the weekly District of Columbia Register, and the District of Columbia Municipal regulations. In addition, $542,100 and seven positions are being redirected from within the Office of the Executive Secretary and will provide the new Office of Documents with a total budget of $645,500 and nine positions for 1981.

An increase of $6,000 has been approved for telephone services, supplies and materials for the Office of the Secretariat. The Committee has not approved the increase of $7,300 requested for bilingual publications. A total of $60,000 has been provided for this purpose, $30,000 in 1980 and $30,000 in the 1981 base.

OFFICE OF THE CORPORATION COUNSEL

The Committee has approved a total of $5,112,700 and 165 positions for the Office of the Corporation Counsel for fiscal year 1981. The Corporation Counsel serves as the chief legal officer of the District of Columbia. The office performs all of the legal responsibilities and functions of the District except for felony and serious misdemeanor prosecutions of adults which are performed by the United States Attorney.

The allowance recommended by the Committee includes an increase of $426,000 and eleven positions above the 1980 level. In addition to funding eleven new positions, the amount recommended will be sufficient to fill nine positions which are presently unfunded and will provide the office with a total of 101 attorneys. The Committee believes that adequate representation of the District government is essential if the city is to minimize contract losses and avoid increased costs resulting from settlements of claims and lawsuits made under less than desirable conditions. Program increases of $22,000 for annualization, $64,800 for within grades, and $20,000 to initiate a training program have been approved as requested.

The Committee is pleased that the Corporation Counsel is seeking grant funds for a management study. The Committee has been advised that included in the major objectives of the study will be a recommended organization structure based on the functional requirements of the office and a recommended administrative support system including supply, personnel, staff procedures, manual and automated information systems, and files.

The Committee has requested the Corporation Counsel to prepare a report on jury and witness fees. This request is discussed earlier in the report on page 4.

OFFICE OF THE CITY ADMINISTRATOR

A total of $350,100 and 13 positions are recommended for fiscal year 1981, an increase of $135,300 and five positions above the 1980 level.

Three of the five new positions are recommended to assist the City Administrator in carrying out the broad supervisory responsibilities of the office which coordinates and monitors a large number of city functions in addition to directly supervising 16 operating agencies.

The Committee has received a copy of the City Administrator's report on productivity improvements which have resulted in improved service delivery and annual savings in both actual and avoided costs. The Committee supports these efforts and has added two additional research and development specialists with the understanding that the productivity improvement program will be expanded and continue to receive top priority from city officials.

OFFICE OF INTERGOVERNMENTAL RELATIONS

The bill includes $244,700 and eight positions for fiscal year 1981 which continues this office at the current year level. The amount recommended is $68,200 and two positions below the request and reflects denial of the transfer-in of two legislative analysts; one from the Department of Transportation and the other from District-wide base adjustments.

OFFICE OF BUDGET AND RESOURCE DEVELOPMENT

An appropriation of $1,829,00 and 53 positions are recommended for fiscal year 1981, the same as the amended budget request. Included in the Committee's recommendation are the transfer of $288,000 and ten positions from the Office of Financial Management for the purpose of carrying out the budget responsibility under the District's new financial management system.

OFFICE OF FINANCIAL MANAGEMENT

The Committee recommends a total of $12,200,000 and 227 positions for fiscal year 1981, an increase of $1,042,400 above the fiscal year 1980 level and $1,200,000 below the request.

The increase of $779,600 for contractual services for computer leasing and maintenance has been approved along with an increase of $200,000 for increased electrical costs associated with the "Share" computer center and $30,000 to cover the increased cost of data processing supplies and materials. The Committee has approved the various transfers including $644,000 transferred from the Department of Transportation in connection with the "Share" computer center.

The Committee has not approved the $1,200,000 requested for interest payments on short-term borrowings from the commercial market. The Federal Treasury has provided advances in past years to enable the District to meet its short-term cash-flow needs which result from variations in the rate of disbursements and tax collections during the year (53 Stat. 1118). The added expense for short-term borrowings does not appear to be justified at this time. The Committee believes the U.S. Treasury should continue assisting the city in meeting its short-term cash requirements by providing temporary advances to the District of Columbia government.

Although funds to pay interest on short-term borrowings have not been approved, the Committee is nevertheless interested in the District government's efforts to issue short-term notes and requests that a report on this subject be submitted to the Committee by January 1, 1981.

OFFICE OF PERSONNEL

The bill includes $7,747,000 and 312 positions for fiscal year 1981, the same as the amended budget request, for the District's new centralized Personnel Office created by the District of Columbia Merit Personnel Act (District of Columbia Law 2–139) which became effective on March 3, 1979. The 312 positions recommended include 66 positions and $1,829,400 appropriated to the former Office of Personnel and 246 positions and $5,970,300 previously appropriated to 14 departments and agencies. The Act separated the District's personnel system from the Federal personnel system as of January 1, 1980, except for the continued participation by District employees in the Federal retirement, health insurance and life insurance programs. In addition to requiring a centralized personnel office, the Act broadened the scope of collective bargaining with labor organizations and expanded the areas subject to negotiation.

OFFICE OF COMMUNICATIONS

An appropriation of $220,100 and seven positions are recommended for fiscal year 1981, an increase of $12,900 above the fiscal year 1980 level and $9,400 below the proposed request. The Committee has approved $9,400 to publish the booklet "For Your Information" instead of the $18,800 requested.

OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

The Committee recommends the appropriation of $355,900 and nine positions for this office which, since its creation in 1978, has been funded by a portion of the city's Community Development block grant. The level of grant funding for fiscal year 1980 totals $431,900 and 20 positions. Although the recommended allowance is $355,800 and nine positions below the request for fiscal year 1981, District officials are urged to continue using Federal grants to fund salary costs on a 50–50 matching basis with District funds.

The Committee has been assured by District officials that the office has no intention of bringing so-called "smoke stack" industries into the Nation's Capital, but rather its principal efforts are (1) to centralize the economic development functions of the District of Columbia government and (2) to retain and attract businesses such as printing and publishing, food wholesaling, auto/truck repair, and other service industries. The Committee requests that quarterly reports be submitted detailing the office's activities and accomplishments, both anticipated and realized.

DEPARTMENT OF FINANCE AND REVENUE

The bill includes $14,279,000 and 552 positions for fiscal 1981, a reduction of $124,400 below the request. The Committee has denied the increase of $124,400 requested under "inflation cost". As discussed earlier in the report, the Committee does not intend to fund any future requests that have ambiguous titles and do not provide a full explanation and identify the specific items involved.

The allowance recommended by the Committee includes various internal transfers as well as $25,000 to fund a separate mailing of affidavits of home ownership, as required by the Homestead Exemption Act, and $35,000 for mailing of taxpayer information and educational material necessary to keep taxpayers abreast of new legislation.

DEPARTMENT OF GENERAL SERVICES

The Committee recommends the amended budget request of $29,135,800 and 470 positions for fiscal year 1981 for this department which serves as the District's central housekeeping agency. The amount recommended includes an increase of $1,028,100 for leasing additional office space required by the demolition of buildings in which space is presently rented at a lower rate. With this increase, a total of $14,281,336 will be available for space rental in fiscal year 1981 from all sources including Federal grants.

BOARD OF APPEALS AND REVIEW AND BOARD OF EQUALIZATION AND REVIEW

A total of $180,200 and four positions are included in the bill for fiscal year 1981 and reflect the full budget request. The Board of Appeals and Review provides the final administrative remedy for aggrieved citizens challenging decisions of departments and agencies of the District government in matters of property, personal rights and privileges. The Board of Equalization and Review is responsible for hearing and acting on taxpayers appeals of the assessed valuation placed on their properties by the District of Columbia assessor for purposes of real property taxation.

BOARD OF ELECTIONS AND ETHICS

The Committee recommends the budget request of $1,349,200 and 35 positions for fiscal year 1981. This allowance includes two additional auditors to perform desk and field audits in the areas of campaign finance and financial disclosure. Approximately 4,000 District employees are required to file financial statements which were once confidential but under new laws must now be made public and are subject to audit. In addition, the Board's Office of Campaign Finance is responsible for auditing the semi-annual financial statements and reports submitted by lobbyists. The two new positions recommended by the Committee should provide the office with the capability to perform these additional functions.

PUBLIC EMPLOYEE RELATIONS BOARD

A total of $216,900 and four positions are recommended for this new board which was created by the District of Columbia Government Merit Personnel Act of 1978 (District of Columbia Law 2–139) and succeeds the former Board of Labor Relations. In addition to being responsible for resolving labor-management disputes and unfair labor practice cases, the new Public Employee Relations Board will also determine appropriate bargaining units for negotiations concerning compensation and provide an information gathering and distribution system.

ADVISORY NEIGHBORHOOD COMMISSIONS

An appropriation of $719,000 is recommended for fiscal year 1981 for the 36 advisory neighborhood commissions which were established by the Home Rule Charter, Public Law 93–198, to advise the District government on matters of public policy regarding planning, social service programs, health, safety and sanitation in their neighborhoods. This allowance is $641,500 below the amount requested and $94,000 or 15 percent above the appropriation for fiscal year 1980. ANC elections are nonpartisan and each commissioner serves a two-year term. The amount appropriated is allotted to each ANC based on the ratio of its population to the total city population.

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

The sum of $253,900 is recommended as the District's share of the Council of Government's budget for fiscal year 1981 and reflects a voluntary reduction of $15,300 below the budget proposal. The Council, which was organized in 1957 as a voluntary association of the sixteen major cities and counties of the Washington Metropolitan Area, coordinates activities in such fields as transportation, environmental management, housing and community development, and has a total budget of $6,877,000 for fiscal year 1981 consisting of Federal and State grants as well as contributions from the sixteen jurisdictions. The Committee's recommended allowance includes the city's full share of the cost of the Washington Ear, Inc., which operates a radio reading service for the blind and handicapped in the metropolitan area.

OFFICE OF EMPLOYEE APPEALS

The Committee recommends the budget request of $507,700 and 12 positions for this new office which was established by the District of Columbia Merit Personnel Act of 1978 (District of Columbia Law 2-139) to hear and adjudicate appeal of final agency decisions involving employees or potential employees of the District government.

The five members of the board are appointed by the Mayor subject to Council confirmation. Until the Board becomes operational, employee appeals will continue to be handled by the Federal Merit Systems Protection Board.

DISTRICT OF COLUMBIA RETIREMENT BOARD

The budget request of $298,200 and five positions are recommended for this newly established board which was created by the District of Columbia Retirement Reform Act, Public Law 96–122, to manage and control retirement funds for police officers, firefighters, teachers and judges. Investment decisions will be made by an eleven-member board of trustees composed of six elected representatives of the participants in the system and five public members, two appointed by the Council and three appointed by the Mayor. In addition to controlling, managing and investing the retirement funds, the board is responsible for preparing and requesting annual budgets, reporting on the activities and status of the funds and securing actuarial and investment services needed to perform these functions.

ECONOMIC DEVELOPMENT AND REGULATION

The Committee recommends a total of $27,995,000 for 1981 for the 14 departments and agencies funded through this appropriation. This allowance is $1,456,400 below the amount requested in the amended budget and $11,056,300 above appropriations for fiscal year 1980.

The following table summarizes by department and agency the amounts recommended in the bill compared with adjusted appropriations for fiscal year 1980 and budget estimates for fiscal year 1981:

ECONOMIC DEVELOPMENT AND REGULATION

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recomemnded in bill	Bill compared with— 1980 adjusted (1981 base)	Bill compared with— 1981 estimate
Development:					
Office of Planning and Development	$1,867,200	$3,146,600	$3,146,600	+$1,279,400	
Department of Housing and Community and Development	6,575,500	14,139,500	13,139,500	+6,564,000	−$1,000,000
Recorder of Deeds	1,025,200	1,058,000	1,058,000	+32,800	
Office of the Surveyor	469,900	509,900	509,900	+40,000	
Washington Area Convention and Visitors Association	98,000	298,000	98,000		−200,000
Chamber of Commerce	51,200	100,000	51,200		−48,800
Minority Business Opportuntiy Commission	76,700	75,700	75,700	−1,000	
Washington Convention Center	370,200	2,931,800	2,931,800	+2,561,600	
Regulation:					
Office of Consumer Protection	447,400	529,600	447,400		−82,200
Rental Accommodations Office	930,600	1,061,700	983,100	+52,500	−78,600
Department of Licenses, Inspections, and Investigations	3,270,200	3,655,400	3,655,400	+385,200	
Department of Insurance	721,500	716,500	716,500	−5,000	
Public Service Commission	827,600	1,022,200	975,400	+147,800	−46,800
Commission on the Healing Arts Licensure	207,500	206,500	206,500	−1,000	
Total	16,938,700	29,451,400	27,995,000	+11,056,300	−1,456,400

OFFICE OF PLANNING AND DEVELOPMENT

The Committee recommends the budget request of $3,146,600 and 75 positions for 1981, a net increase of $1,279,400 and three positions above the fiscal year 1980 level.

The Committee's recommendations include an increase of eight positions and $1,279,400 for staffing, consulting services, equipment, printing and publishing of materials for development of a comprehensive plan for the District of Columbia which will enable the city to complete the first year of a planning process expected to take approximately two years. The Committee is encouraged with the commitment of District officials to the long range planning concept and looks forward to receiving periodic progress reports and an indepth briefing during next year's hearings.

The Committee has also approved the transfer of $370,200 and eight positions to establish the Washington Convention Center as a separate agency.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

A total of $13,139,500 and 312 positions are proposed for fiscal year 1981, a reduction of $1 million below the amended budget and $6,564,000 above the 1980 funding level.

Included in the Committee's recommendation is an increase of $337,800 and 32 positions to provide for a core administrative staff and related overhead expenses previously funded with a Federal grant which will no longer be available for this purpose. The Committee has also approved funds for 25 housing and building inspectors to improve service delivery and insure that code violations are promptly corrected.

Rent supplement program.—The Committee has not approved the $1 million requested to begin a rent supplement program. The budget justifications stated "The program was intended to provide assistance to 20 percent of the city's rental households, or 22,400 households at maximum participation at an average of $282.37 per household per annum." Based on those numbers the amount of the subsidy required totals $6.3 million; yet the request totaled $1 million with no explanation as to how those households that were to receive a subsidy would be selected.

Housing programs.—The Committee has approved increases totaling $5,036,600 to establish four new housing programs aimed at helping low and moderate income families. Additional private financing is expected to be generated as a result of this appropriation for housing rehabilitation and development in the District. A brief description of the four programs appears in the following paragraphs.

Two million dollars is recommended to establish the Rehabilitation Financing Program which will provide property owners with low-cost financing to bring their properties into standard code-compliance for low and moderate income housing. Housing officials estimate that 58,000 units, or roughly one out of every five in the city, are in need of significant rehabilitation.

The Committee recommends approval of $1,921,300 for the First Right Purchase Assistance Program which is designed to allow lower income renters to purchase their homes and thus avoid displacement. The program calls for the loans to be repaid at settlement from permanent financing or otherwise refunded to the department if the sale is not consummated.

A one-time appropriation of $1 million is recommended to establish a Vacant Building and Land Purchase Program to provide for the acquisition of vacant buildings or land for reuse as low or moderate income housing. Acquisitions are planned on a scattered site basis throughout the city with priority being given to purchasing vacant buildings or land which have a blighting effect on the surrounding neighborhood. The department estimates that this $1 million will leverage at least $2 million in private funds.

To administer the proposed new Capital Gateway Project, the Committee recommends approval of the requested $115,300 and four positions. The project will provide the city with an opportunity to transform an under-utilized low revenue generating area into one that will substantially improve the city's revenue producing capability. Two separate fiscal impact analyses indicate that over a 20-year period the cumulative net revenue surplus should approximate $119 million. The cost of constructing the public infrastructures and improvements is expected to total $40 million over the anticipated ten-year development period with private development costs expected to exceed $200 million.

Building repair fund.—In addition to the four new housing programs just described, the Committee recommends an increase of $750,000 in the Section 5-313 Building Repair Revolving Fund Program which was established in fiscal year 1979. A total of $1,500,000 will be available in fiscal year 1981 for this program which permits the District government to correct housing code violations when property owners fail or refuse to do so after having been given notice of the violations. The city recovers these costs by assessing them as a tax against the property. The costs are then collected through the tax collection procedure.

RECORDER OF DEEDS

The bill includes $1,058,000 and 55 positions for fiscal year 1981, the same as the budget request. The amount recommended includes an increase of $40,000 for the initial costs of installing microfiche equipment in the corporation records division. Revenues collected by the Recorder of Deeds office are expected to be in excess of $14.6 million in fiscal year 1981.

OFFICE OF THE SURVEYOR

An appropriation of $509,900 and 31 positions are recommended for fiscal year 1981, the same as the budget request. The allowance includes an increase of $40,000 which will allow the office to fund 31 positions for the full year.

WASHINGTON CONVENTION AND VISITORS ASSOCIATION

The Committee recommends the appropriation of $98,000 for fiscal year 1981 as the District's contribution to the Washington Convention and Visitors Association. This allowance is the same as the fiscal year 1980 appropriation and $200,000 below the budget request. Testimony indicated that the Association's total budget for fiscal year 1979 was $600,000 with $98,000 coming from the District. Association officials stated that they are trying to reach between $800,000 and $1 million as their budget for 1981. In addition to the city's contribution of $98,000 to the Association, the Committee is recommending a separate appropriation of $370,200 in District funds for the Washington Convention Center to be used for operating and promoting the Center. A discussion of the appropriation for the Washington Convention Center appears starting at the bottom of this page.

DISTRICT OF COLUMBIA CHAMBER OF COMMERCE

The bill includes $51,200 for fiscal year 1981, a reduction of $48,800 below the budget request and the same level of funding as was approved in fiscal year 1980. The Chamber's stated objective is to develop an ethnic market by attracting more ethnic tourists to the District. Its total budget for 1981 from all sources is expected to total $450,000.

MINORITY BUSINESS OPPORTUNITY COMMISSION

The Committee has included an appropriation of $75,700 and three positions for fiscal year 1981, the same as the amended budget request. This is the second year of funding for the seven-member commission which was established by D.C. Law 1-95 to improve minority participation in District government contracts.

WASHINGTON CONVENTION CENTER

An appropriation of $2,931,800 and eight positions are recommended for this new office which was previously included within the Office of Planning and Development. The Committee's allowance consists of

$370,200 for management, operation and promotion of the Center and $2,561,600 to cover principal and interest on construction funds borrowed to date. The Washington Convention Center Management Act of 1979, D.C. Law 3–36, provides that operation of the Center be under the jurisdiction of a five-member board which has been appointed by the Mayor and confirmed by the Council.

The Center will be a new civic exhibition and meeting facility designed to accommodate large national conventions, meetings, and trade shows which cannot now meet in Washington because of inadequate facilities. In addition, the Center will provide facilities for local events, local shows, entertainment, sports tournaments, meetings, and other civic events.

The Committee has approved bill language requested by District officials that requires the independent Convention Center Board to reimburse the District of Columbia Auditor for all reasonable costs incurred in performing the annual audit of the Convention Center.

OFFICE OF CONSUMER PROTECTION

The Committee recommends the appropriation of $447,400 and 14 positions for fiscal year 1981, the same level as provided for fiscal year 1980, but $82,200 and six positions below the fiscal year 1981 request. The Committee is pleased with the Office's consumer education efforts, especially the seminars and training programs it conducts for various community agencies and its use of the media. The Committee believes these are very effective ways to reach consumers and reduce or eliminate problems in the area of consumer fraud.

RENTAL ACCOMMODATIONS OFFICE

A total of $983,100 and 44 positions are recommended for fiscal year 1981, an increase of $52,500 and two positions above the fiscal 1980 level and $78,600 and three positions below the request. Included in the Committee's recommendation are funds for a hearing examiner to handle petitions from landlords requesting rent adjustments to cover the costs of capital improvements. The Committee has also approved the request for an auditor to conduct pre-hearing reviews of documents submitted by landlords who claim to be in a hardship situation. Such situations include having a negative cash flow or receiving less than an eight percent return on their investment.

DEPARTMENT OF LICENSES, INSPECTIONS, AND INVESTIGATIONS

The Committee recommends approval of the amended budget request of $3,655,400 and 153 positions for fiscal year 1981. The primary responsibilities of this department are to assist the professional and business community in complying with the statutory requirements necessary for them to engage in their respective enterprises and to protect the public by investigating, enforcing, regulating, and controlling the numerous licenses and permits issued. The allowance recommended by the Committee includes an increase of $53,600 to annualize six new positions and related costs allowed in fiscal year 1980, an increase of $21,000 to purchase a new van truck equipped with gasoline testing equipment, and an increase of $35,900 to support data processing equipment authorized last year.

The department testified that it collects approximately $9 million a year in revenues and that one of its continuing priorities is to try to curtail the over $1 million a year the city is losing annually in revenues from untaxed liquor. Testimony revealed that two establishments were cited with violations resulting in their liquor licenses being suspended which apparently has little if any effect on the licensee. The Committee was advised that legislation is pending before the Council to allow the District to impose fines in lieu of suspensions. The Committee urges District officials to adopt appropriate measures and to enforce ordinances so as to avoid the unnecessary loss of revenues.

DEPARTMENT OF INSURANCE

The bill includes $716,500 and 27 positions for fiscal year 1981. The Committee's recommendation will allow the department to maintain its current level of services. This department is responsible for regulating the insurance industry in the District and conducts periodic reviews to determine the financial condition of companies and to insure that they are complying with insurance laws. The department estimates it will collect $16.3 million in annual premium taxes and license fees during fiscal year 1981.

PUBLIC SERVICE COMMISSION

A total of $975,400 and 33 positions are recommended for fiscal year 1981 for the Public Service Commission and the Office of the People's Counsel which is a separate entity carried within the budget of the Public Service Commission by statute for administrative purposes only.

For the Public Service Commission, the Committee's recommendation of $813,200 and 28 positions reflects an increase of $93,800 and three positions above the fiscal year 1980 level and $46,800 and three positions below the request for 1981. The three new positions recommended by the Committee include a DS–12 economist, a DS–9 accountant and a DS–8 utility analyst which will provide the Commission with the capability to properly carry out its primary function of utility regulation. The increase of $34,900 for space rental has also been approved.

For the Office of the People's Counsel, the Committee recommends approval of the full budget request of $162,200 and five positions, an increase of $54,000 and one position above the current year level. This office is an autonomous agency charged by statute with providing rate payers of the District with information, consultative services and technical assistance. The People's Counsel serves as the representative for all ratepayers in utility matters before the Public Service Commission. In addition to approving funds for a new consumer complaint processor, the Committee has approved other increases totaling $30,500 in nonpersonal services which will assist the office in carrying out its responsibilities.

COMMISSION ON LICENSURE TO PRACTICE THE HEALING ART

The bill includes the full budget request of $206,500 and five positions for this twelve-member commission which is responsible for developing qualifications criteria for licensing medical practitioners, issuing medical licenses and monitoring the practice of persons involved in the practice of medicine, osteopathy, chiropractic, naturopathy, midwifery and nursing home administration. The Commission is required to investigate, review and resolve complaints from any source against professionals in the healing art categories mentioned above.

PUBLIC SAFETY AND JUSTICE

The Committee recommends a total of $342,696,100 for fiscal year 1981 for the 17 public safety activities funded through this appropriation. This allowance is $22,784,500 above the fiscal year 1980 appropriations and $5,715,900 above the amounts proposed in the fiscal year 1981 budget.

The allocation of funds by department and agency is shown in the following tabulation:

PUBLIC SAFETY AND JUSTICE

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recommended in bill	Bill compared with—	
				1980 adjusted (1981 base)	1981 estimate
Metropolitan Police Department	$111, 542, 100	$107, 085, 500	$113, 522, 100	+$1, 980, 000	+$6, 436, 600
National Guard	377, 700	375, 200	375, 200	−2, 500	
Office of Emergency Preparedness	165, 600	164, 400	164, 400	−1, 200	
Fire Department	39, 588, 600	39, 821, 800	39, 821, 800	+233, 200	
Court of Appeals	2, 137, 800	2, 218, 500	2, 218, 500	+80, 700	
Superior Court	23, 248, 900	24, 448, 800	24, 330, 400	+1, 081, 500	−118, 400
Court System	7, 883, 800	8, 247, 400	8, 237, 200	+353, 400	−10, 200
Public Defender Service	2, 861, 200	2, 901, 200	2, 901, 200	+40, 000	
Pretrial Services Agency	1, 084, 700	1, 132, 600	1, 112, 600	+27, 900	−20, 000
Board of Parole	541, 500	610, 800	610, 800	+69, 300	
Commission on Judicial Disabilities and Tenure	79, 200	79, 200	79, 200		
Judicial Nomination Commission	18, 200	18, 200	18, 200		
Law Revision Commission	414, 900	412, 400	412, 400	−2, 500	
Department of Corrections	59, 286, 500	67, 700, 200	67, 128, 100	+7, 841, 600	−572, 100
Office of Criminal Justice Plans and Analysis	147, 400	110, 000	110, 000	−37, 400	
Police and Fire Retirement Systems	70, 057, 300	80, 515, 200	80, 515, 200	+10, 457, 900	
Judges Retirement System	476, 200	1, 138, 800	1, 138, 800	+662, 600	
Total	319, 911, 600	336, 980, 200	342, 696, 100	+22, 784, 500	+5, 715, 900

METROPOLITAN POLICE DEPARTMENT

A total of $113,522,100 is included in the bill for fiscal year 1981 for the Metropolitan Police Department. This allowance is $1,980,000 above the fiscal year 1980 level and $6,436,600 above the proposed budget for fiscal year 1981.

The budget approved by the Congress last year included additional funds which provided the District with a police force of 4,120 sworn officers. However, action taken since that time by District officials is expected to result in the attrition of 240 officers and an on-board strength of 3,880 officers as of September 30, 1980. The amended budget submitted by District officials for fiscal year 1981 proposed a further cut of 404 officers, 204 by lay offs and 200 by attrition, which would reduce the force to 3,476 as of September 30, 1981, a total reduction of 644 uniformed officers over a 2-year period. The Committee finds this action on the part of District officials unacceptable, especially with the recent upsurge in the crime rate.

Accordingly the Committee has restored $6,436,600 to the police budget for fiscal year 1981 so that the department can maintain an average strength of 3,880 uniformed officers during the year. The Committee is concerned that funds are removed from the department's budget and transferred or reprogrammed to other agencies. While this was denied by District officials during hearings on the budget amendment, the Committee subsequently received a reprogramming request which sought to use "savings" from the police budget to fund programs in a different department. The Committee expects the funds appropriated for the Police Department to be used by the Police Department and does not approve of the use of police funds for other purposes.

Appropriations are provided in the bill to fund an average employment level of 3,880 sworn police officers and 543 civilian employees for fiscal year 1981. Any reduction, by attrition or otherwise, in the employment level of the Police Department is not to be made unless prior approval is obtained from the House and Senate Subcommittees on District of Columbia Appropriations. Requests for any reductions must be accompanied with a justification supported by statistical data.

NATIONAL GUARD

The sum of $375,200 and 20 positions are recommended for fiscal year 1981, the same as the budget request. This allowance is $2,500 below the fiscal year 1980 level and reflects a base reduction as recommended by the city.

OFFICE OF EMERGENCY PREPAREDNESS

The full budget request of $164,400 and seven positions is recommended for this office for 1981. The office maintains the District government's emergency relocation site as well as the Executive Command and Communications Center which provides a timely flow of information on situations and conditions in the city that could develop into serious emergency problems.

FIRE DEPARTMENT

The Committee recommends the budget request of $39,821,800 for the operation of the Fire Department during fiscal year 1981. This allowance is $233,200 above the current year level and includes an increase of $267,200 for the operation of an additional ambulance unit. The Committee's recommendations will provide funding for 50 firefighting companies and 14 ambulance units.

During the hearings officials of the department testified that the collection rate for ambulance fees is only 16.9 percent compared with the national average of 40 percent. Billings by the department totaled $2,243,002 while collections, including Medicare and Medicaid payments, amounted to $378,318. The Committee urges District officials to take appropriate action to improve the collection rate and thus increase revenues to the city.

COURTS

A total of $38,799,900 is recommended for the two courts and related gencies funded under this heading. This allowance is $1,583,500 more han the 1980 adjusted base and $148,600 less than requested by he city. The Committee also recommends additional budget authority f $754,000, to be derived by transfer, for fiscal year 1980 for the Superior Court. Language is included in the bill transferring this authority from the Environmental Services and Supply appropriation for fiscal year 1980. The amount approved by the Committee is $392,747 less than the request which was in the form of a reprogramming proposal from the District. The Committee's action reflects denial of the increase requested to cover a 12.9 percent pay increase that is the subject of a court suit and is presently in litigation.

A comparative summary of the allocations in the bill with the estimates follows:

COURTS

Activity	Estimate	Recommended	Increase/ decrease
Court of Appeals	$2,218,500	$2,218,500	
(By transfer)	*(80,200)*		*(−$80,200)*
Superior Court	24,448,800	24,330,400	−118,400
(By transfer)	*(1,066,600)*	*(754,000)*	*(−312,600)*
Court System	8,247,400	8,237,200	−10,200
Public Defender Service	2,901,200	2,901,200	
Pretrial Services Agency	1,132,600	1,112,600	−20,000
Total	38,948,500	38,799,900	−148,600
(By transfer)	*(1,146,800)*	*(754,000)*	*(−392,800)*

COURT OF APPEALS

The Committee recommends the city's amended budget request of $2,218,500 for fiscal year 1981, a net increase of $80,700 above the fiscal year 1980 adjusted level of operations. This increase includes the additional amounts of $21,000 requested for personal services and $74,000 requested for law books. A total of $138,400 will be available for the purchase of law books during fiscal year 1981.

SUPERIOR COURT

Appropriations totaling $24,330,400 are included in the bill for fiscal year 1981 for the Superior Court This allowance is $1,081,500 more than the amount available for fiscal year 1980 and $118,400 less than the city's request. The Committee has approved the requested increases of $518,100 for personal services and $220,700 for within grade salary advancements along with the $36,400 requested for a court-wide integrated data storage and retrieval system. The request for $33,500 for open-shelf filing equipment and a microfilm reader which will allow the court to keep up with case activity and new filings has also been approved. The bill includes a total of $32,900 for training activities and $50,000 to initiate a typewriter replacement program. Increases of $37,000 for printing and reproduction. $10,000 for supplies and materials. $54,500 for computer rental, and $12,500 for law books have also been approved. A total of $83,000 will be available in 1981 for the purchase of law books by the Superior Court. The Committee has not approved the increase of $70,000 for telephone costs or the additional $10,000 requested for local travel of probation officers.

The proposed increases of $163,200 in jury fees and $51,000 in witness fees have been approved and will provide a total of $1,803,200 in jury fees and $911,000 in witness fees for fiscal year 1981.

During the hearings the Committee discussed the subject of jury fees and witness fees with Court officials. The Committee has requested the Corporation Counsel to develop a report on present costs and possible modifications to the current fees which might be desirable in civil or criminal proceedings. The request appears on page 4 of this report.

The Committee has approved additional budget authority of $754,000 for fiscal year 1980 to be derived by transfer from the 1980 appropriation for Environmental Services and Supply. This budget authority will cover $649,000 for witness and juror fees, and $105,000 for personal services.

DISTRICT OF COLUMBIA COURT SYSTEM

The sum of $8,237,200 is recommended for fiscal year 1981 for the administration of the District of Columbia courts including management of the court reporting operation and financial oversight of Criminal Justice Act funds. This allowance is $353,400 above the fiscal year 1980 level and $10,200 below the proposed budget reflecting a reduction in the increases requested for supplies and materials, transcribing machines for tape recorders, and printing and reproduction. The amount approved by the Committee includes the increases requested for within grades, personal services, and rental of photocopy equipment.

PUBLIC DEFENDER SERVICE

An appropriation of $2,901,200 is included in the bill for fiscal year 1981 and is the same as the budget request. This allowance includes an increase of $40,000 above the current year level for within grade increases. The Public Defender Service provides legal representation to indigent citizens of the District in criminal, juvenile and mental health commitment cases.

PRETRIAL SERVICES AGENCY

The bill provides $1,112,600 and 48 positions for this agency for 1981, an increase of $27,900 and one position above the current year level and $20,000 below the amended budget request. Included in the Committee's recommendation is a computer programmer position requested to maintain the agency's records system which has been completely automated with Federal grant funds. The Committee has also approved $20,000 for the rental of computer equipment necessary to access the host computers located at the Metropolitan Police Department.

BOARD OF PAROLE

The full budget request of $610,800 and $27 positions are included in the bill for the Board of Parole for fiscal year 1981. This allowance includes four new positions and $69,300 more than the fiscal year 1980 appropriation and will enable the Board to process parole applications in a timely manner and substantially reduce the existing backlog.

COMMISSION ON JUDICIAL DISABILITIES AND TENURE

The Committee has approved the budget request of $79,200 for this Commission for the coming year. The Commission is responsible for the evaluation of judges whose terms are expiring and for bringing disciplinary action against judges.

JUDICIAL NOMINATION COMMISSION

The bill provides the amended budget request of $18,200 for the coming year which is the same as the appropriation for fiscal year 1980. The Commission consists of seven members and develops lists of nominees to fill judicial vacancies in the District of Columbia Court of Appeals and the Superior Court. Nominees are selected by the President from these lists for appointment to the bench subject to confirmation by the Senate.

LAW REVISION COMMISSION

The budget request of $412,400 has been approved by the Committee for the operation of this Commission during fiscal year 1981. The Commission was established in 1974 for the purpose of revising the criminal and civil laws of the District of Columbia which have remained virtually untouched since 1901. The Commission has completed and submitted its final recommendations on a complete criminal code, and is in the process of responding to directives in other areas of the law.

DEPARTMENT OF CORRECTIONS

The Committee has approved a total of $67,128,100 and 1,767 positions for the operation of the department during the coming year. The Committee's recommendation is $7,841,600 above the 1980 level and $572,100 less than the budget request for fiscal year 1981. Various base adjustments and transfers totaling $7,709,400 have been approved and include increases of $1,580,300 to reduce the employee lapse rate, $1,784,900 for payment to the Federal Bureau of Prisons for District prisoners housed in Federal facilities, and $4,157,400 for capital debt service costs transferred from the Repayment of Loans and Interest appropriation which has been abolished.

Program increases of $3,130,100 have been approved and include the requested amounts of $530,100 for costs of direct inmate care such as food, clothing and medicine to support an anticipated increase of 300 in the average daily inmate population, and $2,100,000 to replace budget authority associated with operating revenues from the Federal Bureau of Prisons which will now bypass the department and be deposited directly into the District's general fund as required by the city's new financial management system. The Committee has reduced the increase requested for energy costs by $572,100. A total of $5,098,100, including an additional $1,846,300 in this bill, will be available for energy costs in fiscal year 1981.

OFFICE OF CRIMINAL JUSTICE PLANS AND ANALYSIS

The bill provides an appropriation of $110,000 for the central research and evaluation unit of the District's criminal justice system which involves programs and operations totaling $400 million annually.

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

The District of Columbia Retirement Reform Act (Public Law 96-122, approved November 17, 1979) was adopted by the Congress for the purpose of bringing about a comprehensive overhaul of current pension statutes for the city's three major retirement systems—police officers and firefighters, judges, and teachers. The Act requires that major changes be made in police and fire retirement benefits, particularly in the disability area, and also mandates that improvements be made in financing practices which will lead to actuarially sound pension funds for each locally administered plan. The Act also calls for the implementation of procedures to determine the amount of the city's contribution to each pension system, and the development of policy and administrative mechanisms to govern the control and investment of the city's pension funds. In addition to these changes at the local level, the legislation authorizes an annual Federal payment of $52,070,000 to the pension funds over 25 years for a total of $1.3 billion to help place the funds on a sound actuarial footing. The Federal share is included under the Federal funds section earlier in the bill. A major change in financing of the system requires the District government to budget an amount sufficient to cover its net pay-as-you-go costs plus an amortization amount which prevents the unfunded liability of the system from growing faster than the rate of inflation.

A new eleven member board has been established and is discussed on page 25 of this report. The District's contribution to the teachers retirement system is discussed on page 39.

Police and Fire Retirement System.—The bill includes an appropriation of $80,515,200 as requested for the District's contribution to the police and fire retirement system. This allowance includes $76,915,200 to cover current costs of retirement annuities for former police officers and firefighters as well as widows and dependent children of former officers, and $3,600,000 for the amortization payment to the system.

Judges Retirement System.—An appropriation of $1,138,800 is recommended as the District's contribution to the judges retirement system for fiscal year 1981. Included in this allowance is $876,000 for annuities that will be paid to eleven retired judges plus two more scheduled to retire and $262,800 as the amortization payment which will keep the unfunded liability from increasing faster than inflation.

IMPROVEMENTS IN THE DISABILITY RETIREMENT SYSTEM

For the past several years, the Committee has expressed deep concern over the inordinate number of disability retirements from the ranks of police officers and fire fighters. During the review of the 1979 and 1980 budgets, particularly, the Committee demonstrated its dissatisfaction with the city's record in this area by holding special hearings and conducting in-depth inquiries into alleged abuses surrounding disability claims and weaknesses in the administration of the city's disability program. In both years, the Committee recommended major cutbacks in funding for disability benefits; these reductions were accepted by Congress in adopting the appropriations acts for 1979 and 1980. These actions by the Congress provided the city with clear-cut financial incentives to exercise existing administrative authority to bring a halt to the unacceptable pattern of disability retirements from the public safety forces.

The Committee is pleased to report that these efforts have begun to show measurable results. In 1979, for example, only 14 percent of the total number of new police and fire retirements were attributed to disabilities, down sharply in comparison with 44 percent in 1978 and 55 percent in 1977. The 1979 disability rate is by far the lowest reported level in decades and suggests that a concerted attempt is being made to close the door on unjustified disability claims. Furthermore, closer attention to the administrative details of the program appears to be having the desired effect of speeding up internal processing, consolidating medical recordkeeping, and initiating timely reviews of every disabled retiree's medical condition and annual earnings statements. In addition to these administrative measures, the District of Columbia Retirement Reform Act (Public Law 96–122) was enacted by Congress during the past year and is designed to make the disability program more equitable and further strengthen the process of claims review and adjudication.

The Committee is encouraged by these actions and feels the District government has taken seriously the need to turn the situation around. But the city must not be misled by this initial evidence of progress into believing that the problem of disability abuse has been overcome. The Committee believes District officials must continue their close scrutiny of disability retirements to ensure the effective administration of the program consistent with the spirit as well as the letter of the law. During the hearings on the 1982 budget the Committee intends to pursue this matter once again in an effort to determine whether the trend toward reduced disability claims is continuing and whether the goals of the new pension reform legislation are being realized.

PUBLIC EDUCATION SYSTEM

A total of $392,245,100 is recommended for the operation of the seven activities included within this appropriation. This allowance is $25,944,300 more than appropriated for fiscal year 1980 and $1,762,300 more than the amended request for 1981.

A summary of the allocations to the agencies and offices under this heading compared with the budget estimates follows:

PUBLIC EDUCATION SYSTEM

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recommended in bill	Bill compared with— 1980 adjusted (1981 base)	Bill compared with— 1981 estimate
Board of Education (Public Schools)	$268, 295, 200	$274, 349, 700	$276, 349, 700	+$8, 054, 500	+$2, 000, 000
Teachers Retirement and Annuity Fund	22, 705, 000	38, 717, 200	38, 717, 200	+16, 012, 200	------------
University of the District of Columbia	56, 986, 400	58, 403, 400	58, 403, 400	+1, 417, 000	------------
Public Library	13, 091, 400	13, 647, 600	13, 647, 600	+556, 200	------------
Commission on the Arts and Humanities	473, 500	592, 900	355, 200	−118, 300	−237, 700
Educational Institution Licensure Commission	64, 300	87, 000	87, 000	+22, 700	------------
School Transit Subsidy	4, 685, 000	4, 685, 000	4, 685, 000	------------	------------
Total	366, 300, 800	390, 482, 800	392, 245, 100	+25, 944, 300	+1, 762, 300

PUBLIC SCHOOLS

The Committee notes recent reports of large and costly administrative staffs for the Board of Education and the school system. Although the Committee has not attempted to verify these reports, board members and school officials are urged to review their operations and to make adjustments accordingly keeping in mind that priority should be given to funding classroom personnel.

COMMITTEE RECOMMENDATIONS

The Committee has approved a total of $276,349,700 and 8,869 positions for the public school system for the coming fiscal year, a net increase of $8,054,500 above the adjusted base for fiscal year 1980 and $2 million above the city's amended budget request. This increase of $2 million is intended to help offset reductions in classroom teachers presently under consideration by local officials. The Committee is hopeful that through a combination of efforts, including early-out retirements, the adoption of various economy measures, and other proposals currently under review by school officials, teacher lay-offs will be avoided.

The bill includes the increase of $9,913,800 requested to cover an estimated 5 percent cost-of-living pay raise for all school personnel. An increase of $1,500 in the Superintendent's representation allowance has not been approved. The sum of $1,000 will be available for this purpose in fiscal year 1981.

TOTAL RESOURCES

The school system expects to have a total of $323,686,400 available for operating expenses and debt service costs during the coming school year from the following sources:

Item	*Fiscal year 1981*
Operating expenses:	
Appropriations recommended in bill	$276, 349, 700
Federal grants	45, 702, 800
Other grants and reimbursements	1, 633, 900
Total, operating expenses	323, 686, 400

PUPIL MEMBERSHIP

Pupil membership for the 1980–81 school year is projected to be 98,700, a decrease of 7,456 below the 1979–80 enrollment. The following table shows annual pupil membership statistics from 1969–70 to the 1980–81 estimate:

PUPIL MEMBERSHIP, 1968–69 THROUGH 1980–81

Date	Enrollment	Decrease
October 1968	146, 283	
October 1969	145, 584	699
October 1970	142, 857	2, 727
October 1971	139, 650	3, 207
October 1972	136, 783	2, 867
October 1973	132, 438	4, 345
October 1974	128, 389	4, 049
October 1975	126, 568	1, 821
October 1976	122, 586	3, 982
October 1977	116, 595	5, 991
October 1978	113, 858	2, 737
October 1979	106, 156	7, 702
October 1980 (estimate)	98, 700	7, 456

With the amount recommended in the bill, per pupil expenditures for the 1980–81 school year from all sources will total $2,976 of which

$2,497 will be from District funds and $479 will be from Federal funds. The average pupil-teacher ratio during the coming year is estimated to be 26 to 1.

The Committee is encouraged by recent reports of scholastic improvements by students in the public school system for the second consecutive year, and commends school personnel especially the Superintendent whose leadership is certainly a significant factor in this accomplishment. Hopefully the system has turned around and with emphasis being placed on basic reading and math and a competency-based curriculum, progress will continue.

TEACHERS RETIREMENT AND ANNUITY FUND

A total appropriation of $38,717,200 is recommended for fiscal year 1981 as the District's contribution to the retirement system for teachers. The recently enacted District of Columbia Retirement Reform Act (Public Law 96–122) discussed earlier requires contributions from the city to cover current annuity payments to retired teachers as well as an amortization payment to prevent the unfunded liability from growing faster than inflation. The allowance recommended by the Committee reflects an increase of $16,012,200 above the appropriation for fiscal year 1980 and includes $29,567,200 for annuities and $9,150,000 as the amortization payment.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

The amount recommended for the University of the District of Columbia for fiscal year 1981 totals $58,403,400, the same as the budget request and $1,417,000 above the adjusted base for 1980. The Committee's recommendations include $100,000 to establish an Institute of District Affairs to provide technical assistance and research support to the executive and legislative branches of the District government and to assist the city in analyzing managerial and technical problems. The bill includes increases of $2,870,600 to annualize staffing and maintenance for phase II of the Van Ness Campus funded for 3 months in fiscal year 1980 and $400,000 to cover within grades salary costs.

A comparative summary showing the estimates and recommendations by activity follows:

UNIVERSITY OF THE DISTRICT OF COLUMBIA

Activity	Estimate	Recommended
Executive Direction and Support	$3,263,400	$3,263,400
Academic Affairs	29,305,500	29,305,500
Student Affairs	3,080,900	3,080,900
Administration and Finance	14,016,300	14,016,300
Institutional Advancement	1,063,500	1,063,500
Debt Service	7,673,800	7,673,800
Total	58,403,400	58,403,400

PUBLIC LIBRARY

The Committee has approved the amended budget request of $13,647,600 and 420 positions for the coming fiscal year. This allowance is $556,200 above the adjusted base for fiscal year 1980 and includes $832,100 for purchasing books and publications and $149,000 requested to cover the impact of inflation on utility costs. The Committee recommends approval of the $346,700 requested to complete the installation of a fully automated circulation control and book inventory system which was initiated with grant funds in January 1977. In addition to the installation costs, funds totaling $104,000 have been approved for maintenance and supplies for the system which is designed to eliminate duplication of certain tasks and encourage the return of books estimated to total in the thousands that are presently kept out indefinitely or never returned.

COMMISSION ON THE ARTS AND HUMANITIES

The Committee recommends an appropriation of $355,200 and three positions for fiscal year 1981, a reduction of $237,700 and five positions below the amended request. The Committee has approved the requested transfer of $1,200 to the District-wide base adjustments. The requests to transfer $67,100 from the Department of Recreation and $50,000 from the Department of Human Services have not been approved. The Commission expects to receive $365,000 in grants from the National Endowment for the Arts and $23,400 in CETA funds for a total budget of $743,600 and eleven positions in fiscal year 1981.

EDUCATIONAL INSTITUTION LICENSURE COMMISSION

The request to establish the Educational Institution Licensure Commission as an independent agency within the District's public education system at the level of $87,000 and two positions is approved. The five-member Commission is presently staffed with one employee in the District's Department of Licenses, Inspections, and Investigations. The Commission is responsible for the licensing and regulation of all private educational institutions and is charged with establishing minimum standards concerning the quality of education, business practices, and fiscal responsibility of these institutions.

Commission officials testified that they are in the process of developing a fee schedule which they will recommend to the Mayor and Council for adoption. The Committee urges District officials to establish a fee schedule providing for sufficient revenues to the city which would offset the cost of the Commission.

SCHOOL TRANSIT SUBSIDY

The Committee recommends approval of the $4,685,000 requested for 1981 for this program which was formerly under the Transportation Services and Assistance appropriation. Funds from this appropriation are used to subsidize District schoolchildren who use the public transportation system to travel to and from school. Enrollment in the public school system is expected to drop by seven percent in the coming year; however, potential savings from this drop are offset by the increase in fares which has to be covered by the subsidy.

HUMAN SUPPORT SERVICES

A total of $375,082,200 is recommended for the ten departments and agencies funded through this appropriation. This allowance is $13,755,300 more than the adjusted base for 1980 and $6,934,800 below the proposed budget for 1981.

A summary comparing the Committee's recommendations with the estimates by department and activity follows:

HUMAN SUPPORT SERVICES

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recommended in bill	Bill compared with— 1980 adjusted (1981 base)	Bill compared with— 1981 estimate
Disability Compensation	$5,807,100	$5,807,100	$5,807,100	------------	------------
Unemployment Compensation	5,581,200	6,998,600	6,431,700	+$850,500	−$566,900
Office of Human Rights	1,035,500	1,176,800	1,035,500	------------	−141,300
Office on Aging	1,482,800	2,490,700	2,346,800	+864,000	−143,900
Office on Latino Affairs	106,200	286,600	106,200	------------	−180,400
Department of Employment Services	11,283,200	15,721,000	14,238,300	+2,955,100	−1,482,700
Commission for Women	55,900	106,900	106,900	+51,000	------------
Department of Recreation	23,057,100	22,650,700	22,717,800	−339,300	+67,100
Department of Human Services	281,970,300	296,581,300	292,194,600	+10,224,300	−4,486,700
D.C. General Hospital	30,947,600	30,097,300	30,097,300	−850,300	------------
Total	361,326,900	382,017,000	375,082,200	+13,755,300	−6,934,800

DISABILITY COMPENSATION

The bill includes the budget request of $5,807,100 for 1981 for this program which provides medical care, compensation, and vocational rehabilitation for District employees injured on the job.

UNEMPLOYMENT COMPENSATION

The Committee recommends an appropriation of $6,431,700 for 1981, a reduction of $566,900 below the request and $850,500 above the appropriation for fiscal year 1980. This program provides unemployment compensation benefits to former employees of the District of Columbia government. These funds are used to reimburse the District's Unemployment Compensation Board for benefits paid by that office to former city employees.

In reducing the funding level for this program, the Committee has taken into consideration the amounts restored in the bill for teacher positions and police officers which should result in fewer claimants than anticipated in the proposed budget.

OFFICE OF HUMAN RIGHTS

The bill includes a total of $1,035,500 and 46 positions for fiscal year 1981 which will continue this office at the same funding level as it received in fiscal year 1980. The allowance recommended is $141,300 and seven positions below the proposed budget.

OFFICE ON AGING

The bill includes $2,346,800 and five positions for fiscal year 1981, a reduction of $143,900 and seven positions below the request and an increase of $864,000 and two positions above the fiscal year 1980 appropriation level. The two new positions recommended by the Committee will allow the office to improve its monitoring and evaluation of the various programs it funds for elderly residents of the city. The Committee has approved the transfer of $154,000 from the Department of Human Services to fund a geriatric resocialization program for elderly persons leaving St. Elizabeths Hospital, and increases totaling $834,000 to address the needs of senior citizens in the District. Included in this allowance is an increase of $249,000 to expand transportation and escort services for senior citizens for basic day-to-day tasks, an increase of $172,000 to provide home-delivered meals as well as homemaker and chore services, and an increase of $312,000 as the District's share of funding for the Washington Geriatric Center which is the developmental focus for a long-term care service system seeking alternatives to institutionalization by providing skilled and intermediate care as well as in-home, community-based and institutional services for the elderly.

In addition to the amount recommended in the bill, the Office on Aging expects to receive $3,105,700 in other revenues, including $3,085,700 and 20 positions from Federal grants, for a total budget of $5,452,500 and 25 positions for fiscal year 1981.

OFFICE ON LATINO AFFAIRS

An appropriation of $106,200 and four positions are recommended for fiscal year 1981, a reduction of $180,400 and six positions below the proposed budget and no change from the fiscal year 1980 level. According to testimony received by the Committee the Latino population is fluctuating between 50,000 and 70,000 this year as compared to a fluctuation of between 60,000 and 75,000 last year. The budget recommended by the Committee will continue the office at the fiscal year 1980 funding level.

DEPARTMENT OF EMPLOYMENT SERVICES

The Committee recommends the appropriation of $14,238,300 and 86 positions for fiscal year 1981 for this newly-named department which was formerly the Department of Labor. Various base adjustments totaling $948,100 and 25 positions have been approved, including $845,100 and 13 positions transferred from the office of personnel for the Workmen's Compensation Program. The Department estimates it will have a total budget of $84,988,000 in fiscal year 1981 consisting of the amount recommended in the accompanying bill and $70,749,700 in Federal grants and other revenues. In addition to approving the increases for annualization, space rental and personal services, the bill includes $13,276,100 in District funds for four jobs programs. Two of the programs—in-school jobs and out-of-school jobs—are new while the other two—summer jobs and jobs for adults with dependents—are existing programs initially funded in fiscal year 1980.

The request for $764,600 for "in-school jobs for youth" has been approved and is designed to serve 1,000 youth enrolled full-time in school with priority being given to those who may drop out of school to seek work because they are economically disadvantaged. The Committee has also approved the establishment of an "out-of-school jobs for youth" program for 300 young people between the ages of 16 and 24 years of age who have dropped out of school but need work experience and job skills in order to become employed. The amount recommended for this program is $3,414,600 which is $1,482,700 below the request.

While the Committee finds these two programs desirable and originally intended to fully fund both of them, it is concerned about the selection process and the need to provide meaningful employment opportunities for young people in the city. District officials are urged to give appropriate attention and consideration to these programs to determine what skills have been acquired by the participants. The Committee requests that it be provided with quarterly reports on the operation and effectiveness of these programs. The reports should include data on the criteria for determining the number of eligible youth, the method used in selecting them to participate in these programs, and the job skills acquired as well as the placement objectives.

The program to provide jobs for adults with dependents was first funded in fiscal year 1980 at the level of $3,938,000. The Committee recommends that it be continued in fiscal year 1981 at that level, which will fund 840 jobs for city residents who are at least 22 years of age. The objective is to provide on-the-job training opportunities for a period of one year with employers being reimbursed an average of 50 percent of the participant's wage if the total wage is $5.00 per hour or less.

Funding of the Summer Youth Jobs program is recommended at the requested level of $5,158,900. This will be the third year of funding for this program which provides 8,000 city youth between the ages of 14 and 21 years with subsidized work at the minimum wage for a period of 20 hours to 40 hours a week for 9 weeks during the summer. It seems that administrative problems continue to plague this program. District officials are urged to use the time between the fiscal 1980 and 1981 programs to resolve these problems. The Committee has retained language carried in last year's act which prohibits the obligation of funds for the summer jobs program until a plan submitted by the Mayor and Council has been approved by the Committee and its counterpart in the other body.

COMMISSION FOR WOMEN

The Committee recommends approval of the full budget request of $106,900 and four positions for fiscal year 1981, an increase of $51,000 and two positions above the fiscal year 1980 level. The two additional staff positions recommended by the Committee are intended to reinforce the Commission's capability at the professional level.

DEPARTMENT OF RECREATION

A total of $22,717,800 is included in the bill to support the various recreation programs administered by the Department of Recreation in fiscal year 1981. The Committee's recommendation is $339,300 below the current year level and $67,100 above the budget reflecting denial of the city's proposal to transfer this amount to the Commission on the Arts and Humanities.

The Committee has approved the $240,300 requested for staffing and maintenance of the Fort Lincoln Recreation Center and Pool as well as the $20,100 requested for staffing and maintenance costs at Community Park West which is also known as the Shapiro Tract. Increases of $202,700 requested for various senior citizens programs and $226,500 for the mobile recreation program have also been approved along with the increase of $749,900 requested to cover higher costs of utilities at the Department's facilities throughout the city.

DEPARTMENT OF HUMAN SERVICES

The bill includes a total of $292,194,600 for the operation of the various activities and programs of the Department during fiscal year 1981, which is $10,224,300 above the current level and $4,486,700 less than requested.

A summary comparing the Committee's recommendations with the estimates by major activity follows:

DEPARTMENT OF HUMAN SERVICES

Activity	Estimate	Recommended	Increase/ decrease
Office of the Director	$20,138,200	$20,138,200	....
Commission on Social Services	194,299,300	191,362,600	−$2,936,700
Commission on Public Health	77,174,900	75,624,900	−1,550,000
Debt Service	5,068,900	5,068,900	....
Total	296,681,300	292,194,600	−4,486,700

COMMITTEE RECOMMENDATIONS

The Committee has approved a total of $10,253,600 for the District's day care program. This allowance includes an increase of $550,000 above the 1980 appropriation. Increases totaling $1,713,500 for Forest Haven have also been approved and include $1,158,900 to deinstitutionalize an additional 100 residents, $554,600 to annualize the increase provided in last year's bill for the residential care division at Forest Haven, and $82,700 to establish an Office of Developmental Disabilities with seven positions. The Committee has approved the increase of $405,000 which will permit the city to place an additional 100 persons in adult foster homes under the Supplemental Security Income Domiciliary Care Program and provide an increase of $10 per month to cover the costs of room, board and care for each resident in an adult foster care home.

The bill includes a total of $21,348,700 to reimburse Saint Elizabeths Hospital for the costs of in-patient care provided to District residents during fiscal year 1981. The amount recommended is $1,600,000 below the request. The Committee has not approved the request to transfer $50,000 in grants for special constituency groups from the Department's Mental Health Administration to the Commission on the Arts and Humanities. An increase of $6,266,600 is recommended for aid to families with dependent children and general public assistance and reflects a reduction of $2,936,700 below the amount requested. With the increase recommended by the Committee a total of $59,533,000 in District funds will be available for these programs in fiscal year 1981.

PUBLIC ASSISTANCE

The Committee is pleased to note the reduction in the welfare payment error rate from 23.8 percent in March, 1979, to 18.7 percent six months later in September, 1979, and to 12.9 percent reported for the six-month period ending March, 1980. However, despite this commendable reduction, the latest welfare error rate still represents an annual amount of $11 million in payments to ineligible recipients and in overpayments to eligible persons. These are funds that could otherwise go to truly needy citizens. The Committee believes that the District government must continue aggressive efforts to review welfare cases and to further reduce the high payment error rate in public assistance programs.

In reviewing the quarterly reports from the Income Maintenance Administration, it appears that the city's success in reducing its high welfare payment error rate is due largely to the increased investigation of welfare cases by the Office of Eligibility Review (OER). For this reason, the Committee is concerned over the city's decision to eliminate 25 welfare investigator positions in OER, and to transfer the eligibility review duties to the department's social service representatives. According to the quarterly reports, the productivity record of OER has resulted in error payment reductions of $75,000 to $90,000 per month, with 35 OER investigators involved in taking welfare case actions. This seems to be one of the few offices within the city government that has the potential to continue saving tens of thousands of taxpayer dollars beyond the cost of its own existence through further reductions in welfare payment errors.

The city has assured the Committee that the elimination of 25 welfare investigator positions will not impair the department's continued efforts to further reduce welfare payment errors below the current 12.9 percent level. In order to monitor progress of these efforts, the department is requested to provide the Committee with quarterly statistics concerning the number and percentage of total welfare cases reviewed for errors each month and the payment error rate for that quarter.

The department is also requested to provide the Committee with quarterly statistics for AFDC and General Public Assistance cases concerning the number and dollar value of (1) case closings per month, (2) grant reductions per month, and (3) grant increases per month, as required for AFDC cases under regulations published in the Federal Register by the Social Security Administration on December 19, 1979.

A summary showing the public assistance caseload and expenditures for the past 19 years follows:

PUBLIC ASSISTANCE CASELOAD AND EXPENDITURES, REGULAR CATEGORIES

[Dollar amounts in thousands]

	Average monthly caseload	Average monthly recipients	Total expenditures	Local expenditures	Federal expenditures
1963	11, 067	27, 597	$13, 562. 3	$5, 387. 6	$8, 174. 7
1964	10, 134	25, 202	12, 511. 6	4, 799. 7	7, 711. 9
1965	10, 647	26, 862	13, 350. 8	5, 216. 6	8, 134. 2
1966	11, 375	29, 368	14, 614. 5	5, 526. 8	9, 087. 7
1967	11, 998	30, 563	16, 479. 4	6, 897. 6	9, 581. 8
1968	13, 086	33, 294	19, 432. 6	8, 794. 0	10, 638. 6
1969	14, 880	38, 447	23, 055. 8	10, 957. 1	12, 098. 7
1970	19, 603	49, 983	34, 814. 4	17, 932. 3	16, 882. 1
1971	29, 615	75, 034	56, 801. 8	29, 749. 4	27, 052. 4
1972	40, 629	103, 157	78, 552. 5	41, 390. 5	37, 162. 0
1973	46, 220	117, 211	94, 013. 0	49, 727. 1	44, 285. 9
1974:					
July 1 to Dec. 31, 1973	48, 155	122, 008	50, 772. 4	26, 847. 9	23, 924. 5
Jan. 1 to June 30, 1974	34, 298	106, 267	42. 766. 8	23, 159. 9	19, 606. 9
1975	36, 608	108, 707	98, 633. 5	54, 248. 1	44, 385. 4
1976	38, 222	108, 917	101, 029. 9	56, 396. 3	44, 633. 6
1977	36, 669	101, 447	100, 198. 8	55, 612. 3	44, 586. 5
1978	37, 306	100, 254	102, 378. 7	57, 132. 7	45, 246. 0
1979	37, 325	95, 090	102, 267. 5	57, 287. 8	44, 979. 7
1980 Appropriated	31, 156	83, 321	89, 869. 0	48, 296. 7	41, 572. 3
1981 Congressional, Amended	38, 318	96, 871	106, 693. 5	59, 917. 9	46, 775. 6

Note: Fiscal year 1974 separated because adult cases transferred to Social Security Administration effective Jan. 1, 1974.

DISTRICT OF COLUMBIA GENERAL HOSPITAL

The Committee recommends a total of $30,097,300 to subsidize the operation of the District's public general acute care hospital in fiscal year 1981. This allowance is the same as the budget request and reflects a net decrease of $850,300 below the current year level.

The total budget for the Hospital for fiscal year 1981 is estimated to be $64,667,500, an increase of $2,706,400 above the level for fiscal year 1980, and consists of $30,097,300 in direct subsidies from the District government and $34,580,200 in revenues from medicaid, medicare, insurance and other reimbursements as well as collections from patients.

The Committee has approved the three capital improvements projects totaling $8,776,000 requested by the hospital. These items are discussed under the heading "capital outlay" later in the report.

TRANSPORTATION SERVICES AND ASSISTANCE

Appropriations totaling $147.150,800 are recommended for fiscal year 1981 for the three activities included under this general heading. The Committee's recommendations are $21,675,400 above the amounts appropriated for fiscal year 1980 and the same as the proposed budget.

The allowances to the three activities funded through this appropriation are shown below in comparative form:

TRANSPORTATION SERVICES AND ASSISTANCE

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recommended in bill	Bill compared with— 1980 adjusted (1981 base)	Bill compared with— 1981 estimate
Department of Transportation	$46, 562, 000	$47, 073, 800	$47, 073, 800	+$511, 800	....
Washington Metropolitan Area Transit Commission	72, 000	74, 200	74, 200	+2, 200	....
Washington Metropolitan Area Transit Authority	78, 841, 400	100, 002, 800	100, 002, 800	+21, 161, 400	....
Total	125, 475, 400	147, 150, 800	147, 150, 800	+21, 675, 400	....

DEPARTMENT OF TRANSPORTATION

The bill includes the full budget request of $47,073,800 for fiscal year 1981, an increase of $511,800 above the fiscal year 1980 level. The Committee has approved the increase of $440,500 requested to provide electrical energy for street lighting in fiscal year 1981. A total of $6,979,900 will be available for electricity costs for the street lighting program during the coming year.

The Committee has approved the request to purchase sixteen passenger-carrying vehicles for replacement only. Fifteen of the vehicles are for the department and one is for the Department of Licenses, Inspections, and Investigations. The Committee has also approved bill language which will permit the department to rent three passenger-carrying vehicles for use by the Council of the District of Columbia.

RIGHT-TURN-ON-RED

The Committee is encouraged with efforts by District officials which resulted in increasing the number of approaches where right-turn-on-red is allowed full-time from 18 percent to 41 percent in July 1980. In addition right-turn-on-red is now permitted at 24 percent of the remaining approaches from 7:00 p.m. to 7:00 a.m. This improvement in the city's compliance with the right-turn-on-red requirements of the State Energy Conservation Plans in the Energy Policy and Conservation Act (Public Law 94–163, approved December 22, 1975) is commendable and every contribution to energy savings is significant not only to District residents but also in our national conservation efforts.

The Committee has been advised that District and Federal agencies are cooperating to increase the level of compliance again in the fall after they have reviewed the safety effects of the present right-turn-on-red policy. The Committee requests that it be kept advised of the District's progress.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

An appropriation of $74,200 has been approved as the District's share of the Commission's operating expenses for fiscal year 1981. This allowance is the same as the budget request and includes $2,200 above the fiscal year 1980 appropriation to cover increased costs.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

A total of $100,002,800 is recommended for the District's share of the operating expenses and debt service for Metrorail and Metrobus operations in fiscal year 1981. This allowance is the same as the amount requested and $21,161,400 above appropriations for fiscal year 1980. The Committee has approved increases of $1,174,200 requested to annualize the full year cost of Phase IV and Sunday service which was funded for part of fiscal year 1980 and $10,503,500 to cover various workload requirements including the opening of three additional stations and 3.5 miles of line on the Metrorail system. The request for $14,006,400 to cover increases in the costs of operations has also been approved. The Committee has approved the request for a new fare subsidy program in the amount of $699,400 which will provide reduced fares for passengers boarding or alighting the system at the Minnesota, Deanwood, Benning and Capital Heights stations.

ENVIRONMENTAL SERVICES AND SUPPLY

DEPARTMENT OF ENVIRONMENTAL SERVICES

(GENERAL FUND)

The Committee has approved the budget request of $41,960,400 from the general fund for this department for fiscal year 1981, an increase of $1,085,100 above the current year level. This department, which is the focal point for environmental control activities within the District, is responsible for the distribution of a safe and adequate supply of water throughout the city, collection and treatment of all liquid wastes, collection of residential refuse from properties with three or fewer housing units, disposal of all solid waste generated within the District, and enforcement of environmental regulations for the protection of the health and welfare of District residents.

The request for $80,000 has been approved for a study of the water and sewer service rate structure which will enable the department to develop revenue requirements, allocate costs to user classes and design appropriate rate schedules to provide for the financial requirements of the water and sewer system. The Committee has also approved $330,900 requested to restore the vacant lot and Ward 2 collection program. Ward 2 was one of several areas scheduled to be contracted out. The city has since decided to reduce the contracting out effort for fiscal year 1981. Additional funds of $302,600 to cover increased costs in the waste collection program and $300,000 for replacement of snow equipment have also been approved along with the request for $150,000 to purchase 1,000 public litter receptacles which the department believes will reduce overall collection costs.

The Committee is pleased with the department's efforts to reduce costs while at the same time improve service delivery through the use of new techniques and methods. The Committee strongly supports these efforts and requests that quarterly reports on the department's progress in these areas be sent to the Committee.

The following table shows the appropriation recommended compared with the fiscal year 1981 budget estimate and the fiscal year 1980 adjusted level of funding:

ENVIRONMENTAL SERVICES AND SUPPLY (GENERAL FUND)

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recommended in bill	Bill compared with— 1980 adjusted (1981 base)	Bill compared with— 1981 estimate
Department of Environmental Services...	$40, 875, 300	$41, 960, 400	$41, 960, 400	+$1, 085, 100	....

PERSONAL SERVICES

The Committee recommends approval of the budget request of $25,305,300 for fiscal year 1981 to cover the costs of a city-wide cost-of-living salary increase for District government employees with the exception of Public Schools which is provided for in that agency's budget. The amount recommended by the Committee will fund an estimated 5 percent increase.

The Public Schools budget under the general heading Public Education System includes $9,913,500 which is 5 percent of the personal services budget of the school system.

REPAYMENT OF LOANS AND INTEREST

In past years, funds for the repayment of principal and interest on money borrowed from the Federal Treasury to finance the District's construction program were appropriated under this appropriation heading and subsequently paid to the Federal Treasury. The District has requested that this central account be discontinued in fiscal year 1981 and the funds be appropriated to the individual agencies for which the facility financed by the borrowing was constructed. This is intended to more clearly identify the cost of programs operated by each agency. The Committee concurs in this proposal and has included language under each applicable appropriation heading earmarking the amounts for repayment of loans and interest. The amount recommended in this bill under the various appropriation headings totals $132,731,800 for fiscal year 1981, an increase of $12,274,500 above the central appropriation for fiscal year 1980 and $1,200,000 below the request. This reduction reflects the Committee's action in denying the $1,200,000 requested under the Office of Financial Management to pay interest on short-term borrowings which is discussed in the narrative on the budget for the Office of Financial Management on page 22.

A summary of the appropriation for fiscal year 1980 compared with the amounts recommended in the bill for fiscal year 1981 by appropriation heading and agency follows:

REPAYMENT OF LOANS AND INTEREST

Agency	Fiscal year 1980	Fiscal year 1981	Increase
Governmental Direction and Support: Department of General Services	$5,214,500	$5,344,500	+$130,000
Economic Development and Regulation: Washington Convention Center		2,561,600	+2,561,600
Public Safety and Justice:			
Police Department	1,790,500	1,790,500	
Fire Department	789,500	789,500	
Department of Corrections	4,157,400	4,157,400	
D.C. Courts	3,042,700	3,322,400	+279,700
Public Education System:			
Public Schools	27,299,200	29,810,400	+2,511,200
University of the District of Columbia	7,027,400	7,673,800	+646,400
Public Library	2,803,200	2,803,200	
Human Support Services:			
Department of Recreation	2,107,200	2,107,200	
Department of Human Services	3,121,300	3,121,300	
D.C. General Hospital	1,192,300	1,302,000	+109,700
D.C. obligations	1,894,800	1,947,600	+52,800
Transportation Services and Assistance:			
Department of Transportation	13,552,700	13,743,200	+190,500
Washington Metropolitan Area Transit Authority (Metro)	24,241,400	26,471,400	+2,230,000
Environmental Services and Supply: Department of Environmental Services (general fund)	10,718,800	10,848,300	+129,500
Water and Sewer Enterprise Fund: Department of Environmental Services	11,504,400	14,937,500	+3,433,100
Total	120,457,300	132,731,800	+12,274,500

INAUGURAL EXPENSES

The bill includes $1,330,100 as requested to cover the costs of support services for the Presidential Inaugural in January 1981. Six District agencies will be involved with most of the costs incurred by the Metropolitan Police Department. This account will provide the funding to reimburse those agencies.

The costs of these services are shown below by agency:

Agency	*Amount*
Metropolitan Police Department	$974,000
Fire Department	156,030
Office of Emergency Preparedness	2,964
Department of General Services	2,900
Department of Transportation	68,174
Department of Environmental Services	126,000
Total	1,330,068

WATER AND SEWER ENTERPRISE FUND

The Committee recommends approval of the $81,116,200 requested to establish the water and sewer enterprise fund which will be used to fund the Washington Aqueduct and water and sewer operations of the Department of Environmental Services. As shown in the following table, this allowance is $18,522,200 above the amounts appropriated in 1980 for the two activities financed through this fund:

WATER AND SEWER ENTERPRISE FUND

Activity	1980 adjusted (1981 base)	Budget estimate 1981	Recommended in bill	Bill compared with—	
				1980 adjusted (1981 base)	1981 estimate
Water and Sewer Operations (Department of Environmental Services)	$51,984,400	$69,999,600	$69,999,600	+$18,015,200	....
Washington Aqueduct	10,609,600	11,116,600	11,116,600	+507,000	....
Total	62,594,000	81,116,200	81,116,200	+18,522,200	....

DEPARTMENT OF ENVIRONMENTAL SERVICES

(WATER AND SEWER OPERATIONS)

Approval of the request of $69,999,600 is recommended for fiscal year 1981, and reflects an increase of $18,015,200 above the fiscal year 1980 level of operations. The Committee has approved the increase of $13,599,600 requested to improve the treatment of wastewater at the Blue Plains Wastewater Treatment Plant to meet Federal standards as required by the National Pollutant Discharge Elimination System permit issued to the District in July 1979. The program is designed to provide maximum treatment for wastewater so that the effluent will be of the highest quality and will have minimal impact on the receiving waterway, which in this case is the Potomac River. These funds will allow the region to move one step closer toward the goal of cleaning up the river.

The Commiteee has also approved the increase of $982,500 and eleven positions to complete the staffing for a program to replace large account water meters serving commercial and Federal accounts. These meters are now maintained privately and according to the budget justifications, a survey of 210 meters tested during fiscal year 1979 showed that only 14 percent were accurate. A representative sample of the 86 percent that were inaccurate showed that they registered only 68 percent of the water delivered. Clearly this allowance will result in increased revenues to the District government through the accurate metering of water usage.

The request for $3,433,100 to cover debt service costs for capital construction including water and sewer operations has been approved.

According to testimony received by the Committee the department hopes to collect $10 million in delinquent water billings for the District government over the next two years through the use of the new automated water billing system. The first automated bills went out in June

1979 and the first full billing cycle for the entire city was completed by early Spring.

WASHINGTON AQUEDUCT

The Committee has approved the sum of $11,116,600 for fiscal year 1981, which is $507,000 above the fiscal year 1980 appropriation. The Aqueduct is a division of the U.S. Army Engineer District headquartered in Baltimore and is responsible for the collection, purification and pumping of an adequate supply of potable water for the District of Columbia, sections of Northern Virginia and the Federal government. The increase of $507,000 above the current year level is to cover the additional costs of chemicals and electrical power as well as within grade requirements and overhead charges for support services provided to the Aqueduct by the Baltimore District office.

CAPITAL OUTLAY

The Committee recommends a total of $247,897,800 for construction projects representing the fiscal year 1981 capital improvements program of the District of Columbia government. This allowance is $83,550,300 above the 1980 level and $8,500,000 below the proposed budget for 1981 reflecting a reduction in the city's general permanent improvements request and disapproval of the request to acquire property in a neighboring jurisdiction for use as a sludge disposal facility.

The Committee has also approved the request to remove the 10 percent and 20 percent limitations on appropriations that may be used for construction services. The request to change the name of the account from "construction services" to "project management and design" has also been approved.

Details of the Committee's recommendations on the capital improvements program are discussed starting on the next page.

A summary of the amounts requested and recommended by general categories follows:

CAPITAL IMPROVEMENTS PROGRAM

Activity	Estimate	Recommended	Increase/ decrease
Public Building Construction:			
Department of General Services	$15, 690, 000	$12, 690, 000	−$3, 000, 000
Office of Planning and Development	26, 700, 000	26, 700, 000	
Department of Housing and Community Development	31, 989, 000	31, 989, 000	
Metroplitan Police Department	7, 653, 600	7, 653, 600	
Fire Department	2, 751, 000	2, 751, 000	
Department of Corrections	10, 000, 000	10, 000, 000	
Office on Aging	4, 900, 000	4, 900, 000	
Department of Human Services	1, 201, 500	1, 201, 500	
D.C. General Hospital	8, 776, 000	8, 776, 000	
Total, Public Building Construction	109, 661, 100	106, 661, 100	−3, 000, 000
Department of Transportation	56, 214, 000	56, 214, 000	
Washington Metropolitan Area Transit Authority (Metro)	20, 324, 000	20, 324, 000	
Department of Environmental Services	56, 148, 700	50, 648, 700	−5, 500, 000
Washington Aqueduct	14, 050, 000	14, 050, 000	
Total, capital improvements program	256, 397, 800	247, 897, 800	−8, 500, 000

PUBLIC BUILDING CONSTRUCTION

Department of General Services.—The Committee recommends approval of the $3,850,000 requested for energy conservation improvements in various District-owned buildings and $840,000 requested to replace the heating, ventilating and air conditioning system in Old City Hall at 451 Indiana Avenue, N.W. The Committee has approved $8 million for permanent improvements at various District buildings. This allowance is $3 million below the request.

Office of Planning and Development.—The requested appropriation of $26,700,000 has been approved for the Washington Convention Center. This sum together with previous appropriations of $72 million will provide a total of $98,700,000 for construction of the Center which was started in April 1980. The Center is scheduled to be completed in August 1982 and is designed to accommodate large national conventions, meetings and trade shows which cannot meet in Washington at the present time because of inadequate facilities. The Center will also provide facilities for local events such as local shows, entertainment, sports tournaments, meetings and other civic events.

Department of Housing and Community Development.—A total of $31,989,000 is recommended for the eight projects under this department. Five of the projects and $10,866,000 are in the Fort Lincoln Urban Renewal Area. The Committee has approved $6,156,200 for gasline replacement at nine public housing properties and $3,688,800 for comprehensive improvements and upgrading of the East Capital Dwellings public housing property. The Committee has also approved the request for $11,278,000 for Phase I of the Capital Gateway Development Project which, according to the Department, will attract in excess of $200 million in private development funds.

Metropolitan Police Department.—The requested appropriation of $2,297,100 is approved to replace the Police and Fire Harbor Unit at Pier No. 5 on Maine Avenue, S.W. The Committee has also approved $5,356,500 for the Seventh District Station House which is currently housed in a remodeled three-story garden apartment structure.

Fire Department.—The Committee has approved the request for $735,000 to replace five pumping engines, one aerial ladder truck, and one rescue squad wagon. This is the third year for this replacement program. The request for $2,016,000 to replace Engine Company No. 26 at Rhode Island Avenue and Thayer Street, N.W., has also been approved.

Department of Corrections.—The requested appropriation of $10 million has been approved to make permanent improvements at the Lorton, Virginia complex. This project is designed to improve the environment of residents and staff assigned to the facility.

Office on Aging.—The bill includes $4,900,000 for the acquisition of the National Lutheran Home at 2635 18th Street, NW., which is presently being leased by the office. The Home is a fully licensed and certified skilled and intermediate care or nursing home facility, and will become the Washington Center for Aging Services and serve as a 275-bed skilled and intermediate care facility. The Committee has been advised that no further renovations or rehabilitation of the facility is required at this time.

Department of Human Services.—The Committee has approved the two projects requested by this Department.

The sum of $714,000 is recommended for the addition of four classrooms to the existing academic school at the Oak Hill Youth Center in Laurel, Maryland, and the appropriation of $487,500 is approved for improvements to the animal shelter.

D.C. General Hospital.—Approval of the requested $8,776,000 for three projects is recommended and includes $2,964,000 to cover increased costs to complete work presently underway to correct life safety code and environmental deficiencies at the hospital. The appropriation of $5,562,000 is recommended to construct an addition and make alterations to the Ambulatory Care Center which is designed to provide better service to more patients and thus reduce the hospital's overall operating costs. The sum of $250,000 is included to install prefab slopes at curbs and entrances at the hospital complex to make them accessible to the physically handicapped.

DEPARTMENT OF TRANSPORTATION

The Committee has approved $18,480,900 requested for thirteen projects relating to highway and bridge repairs as well as transportation system improvements throughout the city, and $37,733,100 to refinance various bridge and highway projects.

Included in the thirteen projects are five that are concerned with the replacement of obsolete and deteriorated elements of city streets and highways, and a total of $11,849,800 in District funds has been approved for this purpose. Three of the thirteen projects are designed to augment and support the Metrorail system and will require $2,179,100 in District funds. The Committee has approved $2,779,000 for four projects which involve various safety and roadside improvements, and $1,673,000 to allow the department to perform timely rehabilitation work on bridges.

The Committee recommends approval of the District's request for $37,733,100 in budget authority to refinance various bridge and highway projects. Records of the department were audited in 1979 and it was found that expenditures exceeded budget authority by $63,065,300 which was later increased by $3,143,500 to $66,208,800. This imbalance of $66,208,800 occurred over a sixteen-year period and according to testimony received earlier by the Committee, resulted from "internal and external accounting problems, cost escalations due to inflation, and the lack of adequate budgeting for approved projects". A reprogramming of $28,475,700 was approved in the fiscal year 1979 Supplemental Appropriations Act (Public Law 96–38, approved July 25, 1979) leaving an imbalance of $37,733,100. The Committee has been advised that the department has taken extreme remedial steps, including the establishment and staffing of a new Office of Controller, application of new internal operating procedures and implementation of procedures under the new city-wide Financial Management System. According to the justification material, approval of this request ". . . will not increase the city's total borrowings or add to debt service costs, but will enable the Department of Transportation to close out accounting records."

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

The requested appropriation of $20,324,000 is recommended as the District's share of the capital program for fiscal year 1981 for the metropolitan area's planned 101-mile mass transit system. Included in this recommendation is the sum of $17,600,000 to continue construction work and $2,724,000 for the replacement of 100 buses as well as other capital costs related to metrobus service.

DEPARTMENT OF ENVIRONMENTAL SERVICES

The Committee has approved $50,648,700 for ten of the eleven projects requested by this department for various water, sewer and waste treatment and disposal programs. The Committee has not approved the request for $5,500,000 to acquire property for a sludge disposal facility at Smoot Cove.

The largest request in the department's program for 1981 totals $30,447,000 and is for the Crosstown Watermain which will convey water from the Dalecarlia Filtration Plant across the city to the McMillan Filtration Plant. The present crosstown watermain is 100 years old and, according to testimony, is badly deteriorated and needs to be replaced. Completion of this project will ensure adequate distribution of water throughout the city since it will connect major arteries that supply extensive sections of the District.

The Committee has approved the request for $696,000 to relieve flooding conditions in the Brookland area in Northeast Washington. Department officials testified that serious flooding of homes has been occurring in the area with significant loss of personal and private property. The request for $7,864,000 has been approved for site development at the I-95 landfill, and approval of $1,991,700 is recommended for five continuing projects relating to water mains and service sewer extensions. The request for $1,650,000 to replace the sewage gas piping at the Water Pollution Control Plant has also been approved along with the $8 million requested to rehabilitate the sanitary sewer system.

WASHINGTON AQUEDUCT

The bill includes an additional $14 million which, when added to the initial appropriation of $36,450,000 provided in the 1977 appropriation bill, will provide a total of $50,450,000 to replace the 75 year old McMillan Water Treatment Plant. The plant presently supplies over 60 percent of the water required for the District of Columbia, and according to Aqueduct officials, this additional amount of $14 million is required because previous cost estimates included inadequate amounts for inflation and interest rates and did not anticipate the delay in completing the final design work. The Committee was advised that the present plant is very badly deteriorated and parts of it have been taken out of service because they have literally collapsed.

The request for $50,000 to replace machinery that has reached the end of its useful life at the Dalecarlia and McMillan water treatment plants is also approved.

SUMMARY OF CAPITAL OUTLAY RECOMMENDATIONS BY PROJECT

The following tabulation sets forth the capital improvements program requested in the budget and the Committee's recommendations by project.

SUMMARY OF CAPITAL OUTLAY RECOMMENDATIONS

Project title	1981 estimate	Recommended for 1981
PUBLIC BUILDING CONSTRUCTION		
Department of General Services:		
Permanent Improvements—Various District Buildings	$11, 000, 000	$8, 000, 000
Energy Conservation Improvements—Various District Owned Buildings	3, 850, 000	3, 850, 000
Replacement of Heating, Ventilating and Air-Conditioning System, Old City Hall	840, 000	840, 000
Total, Department of General Services	15, 690, 000	12, 690, 000
Office of Planning and Development:		
Washington Convention Center	26, 700, 000	26, 700, 000
Department of Housing and Community Development:		
Gas line replacement at nine Public Housing properties	6, 156, 200	6, 156, 200
East Capital Dwellings (Public Housing)	3, 688, 800	3, 688, 800
Capital Gateway Development Project—Phase I	11, 278, 000	11, 278, 000
Master Fort Lincoln Utility Construction Project	2, 530, 000	2, 530, 000
Grading and Paving of Fort Lincoln Drive, N.E. 31st Place to Eastern Avenue, Fort Lincoln Urban Renewal Area	5, 564, 000	5, 564, 000
Paving of 33d Place, N.E., South Dakota Avenue to Fort Lincoln Drive, Fort Lincoln Urban Renewal Area	548, 000	548, 000
Paving of Commodore Barney Drive, Fort Lincoln Drive to Eastern Avenue, Fort Lincoln Urban Renewal Area	1, 504, 000	1, 504, 000
Paving of Fort Lincoln Drive, Commodore Joshua Barney Drive to 31st Place, Fort Lincoln Urban Renewal Area	720, 000	720, 000
Total, Department of Housing and Community Development	31, 989, 000	31, 989, 000
Metropolitan Police Department:		
Police and Fire Harbor Unit Replacement, Pier No. 5	2, 297, 100	2, 297, 100
Seventh District Station House	5, 356, 500	5, 356, 500
Total, Metropolitan Police Department	7, 653, 600	7, 653, 600
Fire Department:		
Fire Apparatus Replacement	735, 000	735, 000
Engine Company No. 26 Replacement	2, 016, 000	2, 016, 000
Total, Fire Department	2, 751, 000	2, 751, 000
Department of Corrections:		
Permanent Improvements at Lorton	10, 000, 000	10, 000, 000
Office on Aging:		
Acquisition of National Lutheran Home	4, 900, 000	4, 900, 000
Department of Human Services:		
Four Room Classroom Addition—Oak Hill Youth Center	714, 000	714, 000
Animal Shelter Improvements	487, 500	487, 500
Total, Department of Human Services	1, 201, 500	1, 201, 500
D.C. General Hospital:		
Renovation Correction of Life Safety Code and Environmental Deficiencies	2, 964, 000	2, 964, 000
Alterations and Addition to Ambulatory Care Center	5, 562, 000	5, 562, 000
Physical Accommodations for the Handicapped, Core Building, Children's Building, Building No. 9 OB/GYN, and Building No. 11	250, 000	250, 000
Total, D.C. General Hospital	8, 776, 000	8, 776, 000
Total, Public Building Construction	109, 661, 100	106, 661, 100
Department of Transportation:		
Bridge Replacement/Rehabilitation City-Wide	1, 673, 000	1, 673, 000
Local Street Improvements, City-Wide	2, 600, 000	2, 600, 000
Resurfacing Streets and Highways, City-Wide	8, 130, 000	8, 130, 000
Neighborhood Area Street Improvements, Marshall Heights	1, 590, 000	1, 590, 000
Safety Improvements, City-Wide	150, 000	150, 000
Roadside Improvements, City-Wide	363, 900	363, 900
Center Leg Inner Loop, D Street, N.W. to New York Avenue, N.W	2, 191, 100	2, 191, 100
Minnesota Avenue, N.W. Sheriff Road to Eastern Avenue	66, 800	66, 800
South Capitol Street, South Capitol Street Bridge to D.C. Line	691, 000	691, 000
Blair Road, N.W. Butternut to Piney Branch Road	275, 700	275, 700
Southern Avenue, South Capitol Street to East Capitol Street	74, 000	74, 000
Suitland Parkway Upgrading, South Capitol Street to D.C. Line	153, 100	153, 100
Hechinger Center Access Improvements, Benning Road and Maryland Avenue, N.E.	522, 300	522, 300
Capital Program Financing	37, 733, 100	37, 733, 100
Total, Department of Transportation	56, 214, 000	56, 214, 000

SUMMARY OF CAPITAL OUTLAY RECOMMENDATIONS—Continued

Project title	1981 estimate	Recommended for 1981
Washington Metropolitan Area Transit Authority (Metro):		
Rail Capital—City-Wide	$17, 600, 000	$17, 600, 000
Bus Capital—City-Wide	2, 724, 000	2, 724, 000
Total, Washington Metropolitan Area Transit Authority (Metro)	20, 324, 000	20, 324, 000
Department of Environmental Services:		
Service Sewer Extensions—City-Wide	500, 000	500, 000
I-95 Site Development	7, 864, 000	7, 864, 000
Replacement of Sanitary Sewers in Advance of Paving—City-Wide	500, 000	500, 000
Replacement of Undersized and Defective Watermains—City-Wide	350, 000	350, 000
Trunk and Secondary Watermains—City-Wide	473, 000	473, 000
Trunkmain—Special Projects, Crosstown Watermain	30, 447, 000	30, 447, 000
Dueling Branch Relief Sewer	168, 700	168, 700
Kearney Street Flooding	696, 000	696, 000
Replacement of Sewage Gas Piping, Water Pollution Control Plant	1, 650, 000	1, 650, 000
Acquisition of Smoot Cove Property for Sludge Disposal Facility, Prince Georges County at Oxon Cove	5, 500, 000	....
Rehabilitation of Sanitary Sewer System	8, 000, 000	8, 000, 000
Total, Department of Environmental Services	56, 148, 700	50, 648, 700
Washington Aqueduct:		
Major Plant Replacement and Rehabilitation, Dalecarlia and McMillan	50, 000	50, 000
McMillan Water Treatment Plant	14, 000, 000	14, 000, 000
Total, Washington Aqueduct	14, 050, 000	14, 050, 000
Total, Capital Improvements Program	256, 397, 800	247, 897, 800

GENERAL PROVISIONS

The bill includes the usual general provisions that have been carried in the regular annual appropriation acts for many years. Changes recommended or denied by the Committee are discussed in the paragraphs that follow.

The Committee has approved changes in section 103 of the bill granting the Mayor authority, within the maximum rates prescribed in Federal Travel Regulations, to adjust mileage allowances for privately owned automobiles and motorcycles used for the performance of official duties. Previous bills have included specific amounts which did not provide the Mayor with the flexibility to make adjustments to reflect prevailing economic conditions.

Section 104 of the bill provides that funds may be used for official travel expenses and to pay dues for official purposes when authorized by the Mayor. A proviso has been added which allows the Council of the District of Columbia, the legislative branch of the District government, to expend funds for those purposes without the Mayor's authorization.

The Committee recommends that language in section 105 which prohibits the installation of meters in taxicabs be retained.

The Committee has denied the request to delete section 110 which restricts the use of chauffeurs to the Mayor, Police Chief, and Fire Chief, and limits the amount of compensation that may be paid to the driver for the Mayor to a maximum of $12,000 per year. The Committee recommends continuation of the language restricting chauffeurs to those three officials but has substituted the title and grade level range for a motor vehicle operator plus an overtime allowance of 25 percent in place of the limitation of $12,000 per year on the amount of compensation that may be paid the driver for the Mayor. The change recommended by the Committee will allow adjustments in the driver's salary when other salaries are revised for such things as cost-of-living pay increases.

The budget proposed deleting section 112 which places a limit of $225,000 on the expenditure of funds for travel and per diem costs outside the District, Maryland, and Virginia, and inserting a new provision which, in effect, authorizes not to exceed $225,000 for such purposes. The Committee has disapproved these proposed changes and has retained the language as it appeared in last year's bill which simply limits the availability of funds for such travel to $225,000.

The Committee has adjusted the personnel ceiling carried in section 113 to reflect action taken on the fiscal 1981 requests. The ceiling recommended totals 35,268 filled, authorized positions and specifically designates 30,960 appropriated positions (including 8,869 for Public Schools), 1,952 intra-District positions, and 2,356 positions for the District of Columbia General Hospital. The intra-District classification is new for fiscal year 1981 and includes positions that were identified as reimbursement, revolving fund and capital outlay positions in last year's bill. The recommended ceiling reflects a net decrease of 2,618 positions below last year's limitation and includes 81 additional positions in the new intra-District classification and a reduction of 2,699 in appropriated positions. The monthly reporting requirement for Public Schools and the District of Columbia General Hospital as well as the provision limiting temporary or part-time employees to the number available for the same month of the preceding fiscal year are continued as carried in previous appropriation bills.

Language has been included in section 114 which allows partisan political groups to use school buildings during non-school hours.

The Committee has denied the request to delete section 115 of the bill which requires that the fiscal year 1982 budget of the District of Columbia government be submitted no later than February 1, 1981, and that employment information be made available for inspection.

The Committee has not approved the request to delete section 118 which prohibits the use of funds in the bill for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

The request to delete section 215 of the fiscal year 1980 bill which makes funds available for employment of consultants and experts has been approved. The Committee has been advised that this language is no longer required since the District's Comprehensive Merit Personnel Act, D.C. Law 2-139, became effective on March 3, 1979.

The Committee recommends continuation of section 119 which includes language carried in last years Act prohibiting the use of Federal funds in the bill to perform abortions except in cases of rape, incest or where the life of the mother is endangered. This section also includes language allowing use of Federal funds for medical procedures necessary in order to terminate an ectopic pregnancy.

INFLATIONARY IMPACT STATEMENT

Clause 2(l)(4) of rule XI of the House of Representatives requires that each committee report accompanying a bill or resolution contain a statement as to whether enactment of the bill or resolution may have an inflationary impact on prices and costs in the operation of the national economy.

It is the Committee's considered judgment that enactment of the accompanying bill will have no foreseeable inflationary impact on prices and costs in the operation of the national economy since the bill relates solely to the operation of the local City government of the District of Columbia. The Committee recommends the appropriation of $515,702,600 in Federal funds including a Federal payment of $296,645,500 which becomes a part of local revenues from which appropriations for the operation of the City are made. The bill also includes $52,070,000 as the Federal contribution for the police officers and fire fighters, teachers and judges retirement funds and $8,100,000 in lieu of reimbursements for charges for water and sewer services provided to Federal facilities by the Washington Aqueduct and the Department of Environmental Services. The Federal loan appropriation of $157,557,000 to finance local capital improvements is also recommended in the bill. The loan appropriation constitutes authority for the Mayor of the District of Columbia to borrow funds from the Federal Treasury at the going rate of interest, repayable usually over a 30-year period.

COMPARISONS WITH BUDGET RESOLUTION

In accordance with section 308(a)(1)(A) of the Congressional Budget Act of 1974 (Public Law 93–344) the following table provides comparisons between the new budget authority target set forth in the first concurrent resolution on the 1981 budget, as allocated by the Committee on Appropriations under section 302 of the Act, and the budget authority contained in the accompanying bill:

Federal funds

Subcommittee target	$527,227,000
Committee bill	515,702,600
Difference (over target (+ under target (−))	−11,524,400

FIVE-YEAR PROJECTION OF OUTLAYS

In accordance with section 308(a)(1)(B) of the Congressional Budget Act of 1974 (Public Law 93–344), the following table contains a five-year projection of the outlays associated with the budget authority in Federal funds provided in the accompanying bill:

Federal funds

Item and fiscal year	*Amount*
Budget authority in bill	$515,702,600
Outlays:	
1981	468,000,000
1982	24,000,000
1983	23,702,600
1984	0
1985	0

ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

In accordance with section 308(a)(1)(C) of the Congressional Budget Act of 1974 (Public Law 93–344), the committee is required to report new budget authority and outlays provided for financial assistance to State and local governments. The accompanying bill contains Federal funding as follows:

Item	*Recommendations*
New fiscal year 1981 budget authority	$358, 145, 600
Fiscal year 1981 outlays resulting therefrom	358, 145, 600

TRANSFERS OF FUNDS

Clause 1(b), Rule X of the House of Representatives requires that the report include information describing the transfer of funds recommended in the accompanying bill.

The Committee recommends the transfer of $754,000 in fiscal year 1980 funds from the Environmental Services and Supply appropriation to the Public Safety and Justice appropriation to cover witness and juror fees as well as personal services costs for the District of Columbia courts and court system.

CHANGES IN THE APPLICATION OF EXISTING LAW

Pursuant to Clause 3, Rule XXI of the House of Representatives, the following statements are submitted describing the effect of provisions in the accompanying bill that directly or indirectly change the application of existing law.

1. A language provision under "Governmental Direction and Support" provides that $500,000 shall be available for the settlement of property damage claims not in excess of $1,500 each and personal injury claims not in excess of $5,000 each. The language provides an exemption, within specified limits, from Sec. 1–904 of the District of Columbia Code, which states, in part, that: ". . . all settlements entered into by the Commissioner of the District of Columbia acting under the terms and provisions of sections 1–902 to 1–905 shall be presented to the Congress, together with a brief statement of the nature of the claim or suit, the amount claimed, and the amount of the settlement with a summary of the evidence and circumstances under which the settlement was made." The authority to settle claims and suits was delegated to the District of Columbia Corporation Counsel by Reorganization Order No. 50 (June 26, 1953). The language provision contained in the bill allows the Corporation Counsel to settle and pay claims within the specified limits without first presenting each claim to the Congress. That exemption prevents unnecessary delays in the settlement process for smaller claims and encourages plaintiffs to settle for amounts within the specified ceilings.

2. Under "Public Safety and Justice," language provides an exemption for two classes of passenger motor vehicles from 31 U.S.C. 638a(c) which states, in part, that:

> Unless otherwise specifically provided, no appropriation available for any department shall be expended—
>
> (1) to purchase any passenger motor vehicle (exclusive of buses and ambulances) at a cost—in excess of the maximum price thereof, if any, established pursuant to law by a Government agency.

The classes of motor vehicles exempted from the price ceiling are vehicles used for police, firefighting and fire prevention activities. Because of the special requirements for those types of vehicles the costs exceed the maximum set for passenger motor vehicles for regular use.

3. Language included under "Public Safety and Justice" provides that funds appropriated for expenses under the Criminal Justice Act of 1974 (Public Law 93–412) for fiscal year 1981 shall be available for obligations incurred under that Act in each fiscal year since inception of the program in fiscal year 1975. This language is necessary due to the long time lag between the time attorneys are appointed and the time vouchers are presented to the District for payment.

4. Language is included under "Public Safety and Justice" transferring $754,000 in fiscal year 1980 funds from the Environmental Services and Supply appropriation to the Public Safety and Justice appropriation for unanticipated expenses of the District of Columbia courts and court system to cover witness fees, juror fees and personal services costs.

5. Language is included under "Public Education System" authorizing the District of Columbia Public Schools to accept not to exceed 31 motor vehicles for exclusive use in the driver education program.

6. Under "Human Support Services," there is language providing that appropriations available solely for employees' disability compensation shall remain available until expended. 31 U.S.C. 718 provides, in part, that:

> No specific or indefinite appropriation made subsequent to August 24, 1912, in any regular annual appropriations Act shall be construed to be permanent or available continuously without reference to a fiscal year—unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriations Act in which it is contained makes provision.

7. Language is included under "Transportation Services and Assistance" providing for the rental of three passenger-carrying vehicles for use by the Council of the District of Columbia.

8. On pages 9 and 10 of the bill the Committee has included language establishing a water and sewer enterprise fund which will receive revenues from water and sewer operations for use in financing the maintenance and operation of those activities.

9. Under "Capital Outlay," there is language that provides that the amount appropriated shall remain available until expended. This language is needed to provide an exemption to 31 U.S.C. 718 to allow the funds to remain available beyond fiscal year 1981. The exemption is needed because of the length of time required for the design and construction of capital projects.

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10. The Committee has included language under "Capital Outlay" requiring that funds appropriated for capital outlay projects shall be managed and controlled in accordance with procedures and limitations established under the financial management system and that all such funds shall be available only for the specific project and purpose intended.

11. On page 13 of the bill the Committee has included language granting the Mayor the authority, within rates prescribed by Federal Travel Regulations, to establish mileage allowances for privately owned automobiles and motorcycles used for official purposes.

12. A proviso is included under section 104 of the bill permitting the Council of the District of Columbia to expend funds for travel and payment of dues without authorization by the Mayor.

13. Section 108 of the "General Provisions" provides an exemption from the requirement of subsection (b) of Section 5 of the District of Columbia Public Assistance Act of 1962 (D.C. Code, Sec. 3–204(b)).

That section states that:

> Such amount as referred to in subsection (a) of this section shall not be less than the full amount determined as necessary on the basis of the minimum needs of such person as established in accordance with such regulations.

Because of financing constraints, the District has regularly budgeted for a percentage of the public assistance payment standard, rather than for the full amount as required by Sec. 3–204(b) of the District of Columbia Code. The 1981 appropriations bill contains funds to provide welfare payments at 77.5 percent of the February 1977 cost-of-living standard.

14. On pages 15 and 16 of the bill the Committee has included language limiting the amount of compensation that may be paid the driver for the Mayor to that of a motor vehicle operator, RW–7, plus 25 percent in overtime or premium pay.

15. Language is included in section 115 of the "General Provisions" requiring the annual budget for the District of Columbia government for fiscal year 1982 to be transmitted to the Congress by not later than February 1, 1981. The District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93–198) does not provide a date certain for the transmittal of budgets to the Congress.

16. Section 119 of the "General Provisions" prohibits the use of Federal funds in the bill to perform abortions except for rape, incest, or where the life of the mother would be endangered if the fetus were carried to term.

LIMITATIONS AND LEGISLATIVE PROVISIONS

The following limitations and legislative provisions not heretofore carried are recommended:

1. On page 3 in connection with "Loans to the District of Columbia for Capital Outlay":

> *: Provided, That during fiscal year 1981 and within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $200,000,000*

2. On page 4 in connection with "Governmental direction and support":

> *: Provided further, That $5,344,500 of the funds appropriated for the Department of General Services shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects*

3. On page 4 in connection with "Economic development and regulation":

> *: Provided, That the Convention Center Board, established by section 3 of the Washington Convention Center Management Act of 1979, effective November 3, 1979 (D.C. Law 3–36; D.C. Code, sec. 9–602) shall reimburse the Auditor of the District of Columbia for all reasonable costs for performance of the annual convention center audit*

4. On page 4 in connection with "Economic development and regulation":

> *: Provided further, That $2,561,600 of the funds appropriated for the Washington Convention Center shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects*

5. On pages 5 and 6 in connection with "Public safety and justice":

> *: Provided further, That $1,790,500 of the funds appropriated for the Metropolitan Police Department; $789,500 of the funds appropriated for the Fire Department; $4,157,400 of the funds appropriated for the Department of Corrections; and $3,322,400 of the funds appropriated for the Courts shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects*

6. On page 6 in connection with "Public education system" (new matter in italics):

> * * * , to be allocated as follows: * * * ; *$87,000 for the Educational Institution Licensure Commission;* and *$4,685,000 for the School Transit Subsidy*

7. On page 7 in connection with "Public education system":

> *: Provided further, That $29,810,400 of the funds appropriated for the District of Columbia Public Schools, $7,673,800 of the funds appropriated for the University of the District of Columbia, and $2,803,200 of the funds appropriated for the Public Library shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects*

8. On pages 8 and 9 in connection with "Human support services":

> *: Provided further, That $2,107,200 of the funds appropriated for the Department of Recreation, $3,121,300 of the funds appropriated for the Department of Human Services, $1,302,-*

> *000 of the funds appropriated to the District of Columbia General Hospital, and $1,947,600 of the funds appropriated for District of Columbia Obligations shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects*

9. On page 9 in connection with "Transportation services and assistance" (new matter in italics):

> * * * , including rental of one passenger-carrying vehicle for use by the Mayor *and three passenger-carrying vehicles for use by the Council of the District of Columbia*

10. On page 9 in connection with "Transportation services and assistance":

> *: Provided further, That $13,743,200 of the funds appropriated for the Department of Transportation and $26,471,400 of the funds appropriated for the Washington Metropolitan Area Transit Authority shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects*

11. On page 10 in connection with "Environmental services and supply":

> *: Provided further, That $10,848,300 of the funds appropriated for the Department of Environmental Services shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects*

12. On page 11, in connection with "Water and Sewer Enterprise Fund":

> *Water and Sewer Enterprise Fund*
>
> *For establishment of the Water and Sewer Enterprise Fund, $81,116,200: Provided, That $14,937,500 of the funds appropriated to the Water and Sewer Enterprise Fund shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.*

13. On page 12 in connection with "Capital outlay" (material stricken shown in brackets and new matter shown in italics):

> : Provided, That $3,622,200 shall be available for [construction services] *project management* and $3,558,900 *for design* by the Director of the Department of General Services or by contract for architectural engineering services, as may be determined by the Mayor, *and that the funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all such funds shall be available only for the specific projects and purposes intended:* [and the funds for the use of the Director of the Department of General

> Services shall be advanced to the appropriation account "Construction Services, Department of General Services": Provided further, That the amount appropriated to the Construction Services Fund, Department of General Services, be limited, during the current fiscal year, to ten per centum of appropriations for all construction projects, except for Project Numbered 24-99, Permanent Improvements, for which construction services shall be limited to twenty per centum of the appropriation]

14. On page 13 in connection with "General provisions" (material stricken shown in brackets and new matter shown in italics):

> SEC. 103. Appropriations in this Act shall be available, when authorized or approved by the Mayor, for allowances for privately owned [conveyances] *automobiles and motorcycles* used for the performance of official duties at [17 cents per mile but not to exceed $60 a month for each automobile and at 11 cents per mile but not to exceed $40 a month for each motorcycle, unless otherwise therein specifically provided, except that one hundred and thirteen (eighteen for venereal disease investigators in the Department of Human Resources) such automobile allowances at not more than $935 each per annum may be authorized or approved by the Mayor] *rates established by the Mayor: Provided, That such rates shall not exceed the maximum prevailing rates for such vehicles as prescribed from time to time in the Federal Travel Regulations.*

15. On page 13 in connection with "General provisions" (new matter in italics):

> SEC. 104. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: *Provided, That the Council of the District of Columbia may expend such funds without authorization by the Mayor.*

16. On pages 15 and 16 in connection with "General provisions" (material stricken shown in brackets and new matter shown in italics):

> SEC. 110. No part of any funds appropriated by this Act shall be used to pay the compensation (whether by contract or otherwise) of any individual for performing services as a chauffeur or driver for any designated officer or employee of the District of Columbia government (other than the Mayor, Chief of Police, and Fire Chief), or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of any such officer or employee (other than the Mayor, Chief of Police, and Fire Chief) [. No part of any funds appropriated by this Act in excess of $1,000 per month in the aggregate ($12,000 per annum) shall be used to pay the compensation (whether by contract or otherwise) of individuals for performing services as a

chauffeur or driver for the Mayor, or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of the Mayor.] *: Provided, That the rate of pay for individuals performing services as chauffeur for the Mayor shall not exceed the maximum pay for the classification of a motor vehicle operator, RW-7: Provided further, That no individual driver shall be compensated in overtime or premium pay rates for more than 25 per centum above the basic forty-hour workweek.*

17. On pages 16 and 17 in connection with "General provisions" (material stricken shown in brackets and new matter shown in italics):

SEC. 113. Appropriations in this Act shall not be available, during the fiscal year ending September 30, 1981, for the compensation of any person appointed—

(1) as a full-time employee to a permanent, authorized position in the government of the District of Columbia during any month when the number of such employees is greater than [37,886] *35,268:* Provided, That—

(A) positions within this city employment limitation shall be set aside as the maximum number of permanent, authorized employees as follows: Appropriated positions, [33,659] *30,960* of which [9,652] *8,869* shall be for Public Schools; [reimbursable and revolving fund positions, 1,090; capital outlay positions, 781,] *intra-District positions, 1,952*, District of Columbia General Hospital, 2,356; and

(B) the District of Columbia Public Schools and the District of Columbia General Hospital shall not exceed their respective employment limitations and are hereby required to report monthly to the Mayor, for the purpose of maintaining controls on city-wide employment, regarding the total number of current employees and the total number of separations and filling of positions within their respective employment limitations; or

(2) as a temporary or part-time employee of the govment of the District of Columbia during any month in which the number of such employees exceeds the number of such employees for the same month of the preceding fiscal year.

18. On page 17 in connection with "General provisions" (new matter in italics):

SEC. 114. No funds appropriated in this Act, for the govment of the District of Columbia for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community *or partisan political* group during non-school hours.

COMPLIANCE WITH CLAUSE 3—RULE XIII

Clause 3 of Rule XIII of the Rules of the House of Representatives requires that certain information be included in the report if the accompanying bill repeals or amends any statute or part thereof. There are no changes in existing law made by the bill.

MINORITY VIEWS OF HON. ELDON RUDD

A great deal of emphasis is placed by District of Columbia officials on the concept of "home rule." Congress bestowed partial home rule upon the City of Washington in 1975. However, under the limited home rule charter enacted at that time, Congress reserved its statutory responsibility to appropriate the City government's annual budget, as well as Federal funds to support District of Columbia government operations and capital improvements, in the belief that full home rule should not be granted until the City had established a track record of sound and effective self-government.

The City has not established such a record of effective government and fiscal responsibility. To the contrary, the District's government leadership has brought the City to the brink of financial crisis through refusal to operate within its appropriated budget and available revenues.

The Mayor publicly acknowledged on July 21 that the City government faces the prospect of a $125 million operating deficit during this year alone. This is stark evidence that the City has thus far been unable to live up to the expectations and responsibilities of home rule.

The City government has ignored this Committee's specific directive in the report accompanying its FY 1980 appropriation to operate on the basis of the Congressional allowance. The rate of obligations and expenditures for many District agencies is running millions of dollars beyond the budget allowance, which will result in the $125 million or higher operating deficit for 1980 reported by the Mayor.

The City has also failed to cut program costs wherever possible, to eliminate programs that have outlived their usefulness, and to find less costly alternatives for obsolete programs and under-used facilities with high overhead costs, as directed last year by the Committee.

POPULATION DECLINE AND BUDGET INCREASE

While the District of Columbia's population has declined 21.4 percent since 1975, according to the U.S. Census Bureau, its government budget over the same five-year period has increased 59.6 percent. Following is a table showing the District's population, number of city employees, budget requests and appropriations, and Federal funds since 1975:

DISTRICT OF COLUMBIA POPULATION AND GOVERNMENT EXPENDITURES, 1975–81

Year	Population [1]	City employees [2]	Federal payment		Total Federal funds appropriated [4]	Total new budget obligational authority	
			Estimate	Appropriated [3]		Estimate	Appropriated [3 5]
1975	723,000	44,901	$230,000,000	$226,200,000	$425,232,000	[6] $1,134,886,400	[6] $1,105,838,927
1976	697,000	43,422	254,000,000	248,948,700	505,468,700	1,243,655,173	1,199,654,073
TQ	697,000	43,422	66,500,000	66,137,600	107,559,600	248,536,400	248,130,200
1977	683,000	42,459	280,000,000	276,650,000	422,981,000	1,168,176,400	1,160,251,700
1978	671,000	41,095	300,000,000	276,000,000	399,116,000	[7] 1,441,967,200	[7] 1,389,964,700
1979	656,000	37,569	319,565,000	252,565,000	282,997,000	1,556,278,600	1,412,961,400
1980	568,300	38,080	317,000,000	276,500,000	449,940,300	1,761,053,200	1,590,440,800
1981	568,300	35,111	301,000,000	[8] 296,645,500	[8] 515,702,600	1,776,811,900	[8] 1,764,957,040

[1] Source: U.S. Bureau of the Census.

[2] Includes Metro employees, adjusted to reflect allocation in the District of Columbia only.

[3] Includes supplemental appropriations.

[4] Includes permanent appropriations, annual Federal payment, Federal loans for capital outlay, reimbursements for water and sewer service to Federal buildings, and funds for the Temporary Commission on Financial Oversight (1977, 1978, 1979, 1980). Does not include Federal agency grants or revenue sharing funds.

[5] Does not include Federal grants and reimbursements.

[6] Includes $20,792,400 in supplemental appropriations to cover operating deficits for fiscal years 1972, 1973, and 1974.

[7] Includes $7,378,500 in additional fiscal year 1977 supplemental appropriations.

[8] House Appropriations Committee recommendation.

WELFARE RECIPIENTS

A major reason for the inordinately high government expenditures in the District of Columbia, in spite of the City's steadily declining population, is the fact that 133,140 people—more than 23 percent of all District residents—are on welfare. Furthermore, according to the Department of Human Services, which administers the City's welfare programs, more than 68 percent of welfare recipients have been receiving welfare assistance continuously for more than two years, and more than 40 percent have been on welfare for more than five years.

Welfare and social service programs of the District government comprise 21.2 percent of the total budget, which does not include funds for food stamps and medicaid assistance going to 40,097 recipients at the present time.

Following is a table showing the District's budget for Human Support Services since 1975, including the number of welfare recipients each year and their percentage of the total population of the City:

SOCIAL WELFARE EXPENDITURES AND WELFARE RECIPIENTS, 1975–81

Year	Annual budget for Human Support Services		Welfare caseload [1]	Total number of welfare receipients [1]	Percentage of total population on welfare
	Estimate	Appropriated			
1975	$228,278,000	$226,442,000	67,999	170,133	23.5
1976	265,079,400	264,074,500	63,679	158,100	22.7
1977	268,288,800	274,675,600	56,744	141,244	20.7
1978	289,250,100	291,548,300	60,144	141,344	21.1
1979	303,828,700	296,569,000	54,901	127,952	19.5
1980	374,156,900	356,859,500	58,942	133,140	23.4
1981	382,017,000	[2] 375,082,200	[3] 62,983	[3] 138,328	24.3

[1] Includes individuals receiving Aid to Families with Dependent Children (AFDC), General Public Assistance (GPA), food stamps (adjusted to exclude receipients of other public assistance), and medicaid (adjusted to exclude recipients of other public assistance).

[2] House Appropriations Committee recommendation.

[3] Estimate of D.C. Department of Human Services.

PUBLIC SCHOOLS

As in the case of the District's steadily declining population, pupil enrollment in the City's public schools has also been sharply reduced since 1975. Public school enrollment was 105,362 during the 1979–80 school year, compared to 127,608 during the 1974–75 school year—a drop of 22,246 students, or 17.4 percent.

Public school officials estimate the school enrollment during the 1980–81 school year will be 97,900, a further 7 percent drop below last year's student enrollment, and a total decline of 29,708, or 23.3 percent, in the past five years.

Despite this sharp reduction in the number of students attending D.C. public schools, school expenditures have continued to rise steadily in real terms, as shown by the following table:

SCHOOL ENROLLMENT AND EXPENDITURES, 1975-81

Year	Adjusted average daily student enrollment [1]	Annual appropriation for public schools	Real appropriations (1967 standard dollars)	Average annual per pupil expenditure
1974-75	127, 608	$187, 574, 600	$124, 966, 400	$1, 470
1975-76	125, 871	203, 980, 600	126, 225, 600	1, 620
1976-77	122, 287	224, 787, 100	131, 300, 900	1, 838
1977-78	119, 068	243, 259, 600	132, 566, 500	2, 043
1978-79	113, 050	253, 289, 100	127, 730, 300	2, 240
1979-80	105, 362	268, 295, 200	135, 220, 700	2, 546
1980-81	97, 900	[2] 276, 349, 700	139, 280, 200	2, 823

[1] Source: D.C. Public Schools.

[2] House Appropriations Committee recommendation. (Includes $29,810,400 for debt service not reflected in previous years.)

In my judgment, there is no justification for the steady increase in the District of Columbia budget and the amount of Federal funds allocated to the City, in light of the foregoing facts concerning the sharp population decline and other associated factors, such as the substantial drop in public school enrollment.

Moreover, the failure of District government leaders and managers to chart a clear course towards effective self-government and fiscal responsibility stands out as the surest threat to continued or total home rule for the people of Washington, D.C.

Congress cannot and I am sure will not stand by as the District of Columbia follows New York City to the brink of financial collapse. It was to help the District government to implement sound management and budgetary practices that Congress established and funded the Temporary Commission on Financial Oversight.

However, the primary responsibility in this effort rests with the elected and appointed District government officials themselves—the City Council, the Mayor, the school board, and all department heads. There has been a tendency on the part of some District officials to try to blame Congress for the City's budgetary and management problems. But under home rule, even partial home rule, the responsibility cannot be shifted in this manner.

If home rule for the District of Columbia is to continue, it is up to the City to work out its own problems, and to establish firm guidelines by which the District government will set proper priorities, cut out unnecessary and unjustified programs and expenditures, and live within its own means rather than relying upon the Nation's taxpayers to support unlimited governmental programs.

ELDON RUDD.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1980 AND BUDGET ESTIMATES FOR 1981

PERMANENT NEW BUDGET (OBLIGATIONAL) AUTHORITY—FEDERAL FUNDS

[Becomes available automatically under earlier or "permanent" law without further, or annual, action by the Congress. Thus, these amounts are not included in the accompanying bill]

Agency and item (1)	New budget (obligational) authority, fiscal year 1980 (2)	Budget estimate of new (obligational) authority fiscal year 1981 (3)	Increase (+) or decrease (−) (4)
Repayable advances to the District of Columbia general fund (indefinite appropriation)	[1] $20,000,000	(2)	−$20,000,000
Total, permanent new budget (obligational) authority, Federal funds	20,000,000	(2)	−20,000,000

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[1] The financial plan which accompanied the fiscal year 1980 supplemental budget request for the District of Columbia government shows a total of $60,000,000 advanced to the District by the U.S. Treasury which had not been repaid at the time this report was prepared.

[2] The Committee has denied the District's request for funds to pay interest on short-term borrowings from the commercial market and has included language in the report stating that the U.S. Treasury should continue assisting the city in meeting its short-term cash requirements by providing temporary advances to the District government.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1980 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1981

[Fiscal year]

Agency and item (1)	New budget (obligational) authority, 1980 (enacted to date) (2)	Budget estimates of new (obligational) authority, 1981 [1] (3)	New budget (obligational) authority recommended in bill (4)	Bill compared with— New budget (obligational) authority, 1980 (enacted to date) (5)	Bill compared with— Budget estimates of new (obligational) authority, 1981 (6)
TEMPORARY COMMISSION ON FINANCIAL OVERSIGHT OF THE DISTRICT OF COLUMBIA					
Salaries and expenses	$7,000,000			−$7,000,000	
DISTRICT OF COLUMBIA					
FEDERAL FUNDS					
Federal payment to the District of Columbia	276,500,000	$301,000,000	$296,645,500	+20,145,500	−$4,354,500
Federal contribution to the police officers and fire fighters', teachers', and judges' retirement funds	52,070,000	52,070,000	52,070,000		
Payment in lieu of reimbursement for water and sewer services to Federal facilities	10,500,000	8,100,000	8,100,000	−2,400,000	
Inaugural expenses		1,330,100	1,330,100	+ 1,330,100	
Loans to the District of Columbia for capital outlay	103,870,300	166,057,000	157,557,000	+53,686,700	−8,500,000
Total, Federal funds to District of Columbia	442,940,300	528,557,100	515,702,600	+72,762,300	−12,854,500

DISTRICT OF COLUMBIA FUNDS					
OPERATING EXPENSES					
Governmental direction and support	(70,067,800)	(84,619,900)	(82,178,400)	(+12,110,600)	(−2,441,500)
Economic development and regulation	(16,127,000)	(29,451,400)	(27,995,000)	(+11,868,000)	(−1,456,400)
Public safety and justice	(298,750,900)	(336,980,200)	(342,696,100)	(+43,945,200)	(+5,715,900)
(By transfer, fiscal year 1980)		[2] *(1,146,800)*	*(754,000)*	*(+754,000)*	*(−392,800)*
Public education system	(315,396,800)	(390,482,800)	(392,245,100)	(+76,848,300)	(+1,762,300)
Rescission	(−6,177,400)			(+6,177,400)	
Human support services	(356,859,500)	(382,017,000)	(375,082,200)	(+18,222,700)	(−6,934,800)
Transportation services and assistance	(92,084,100)	(147,150,800)	(147,150,800)	(+55,066,700)	
Environmental services and supply	(82,007,900)	(41,960,400)	(41,960,400)	(−40,047,500)	
Personal services	(63,521,500)	(25,305,300)	(25,305,300)	(−38,216,200)	
Repayment of loans and interest	(120,457,300)			(−120,457,300)	
Pension funds	(16,997,900)			(−16,997,900)	
Demonstration expenses—Presidential Inaugural		(1,330,100)	(1,330,100)	(+1,330,100)	
Water and sewer enterprise fund		(81,116,200)	(81,116,200)	(+81,116,200)	
Total, operating expenses (net)	(1,426,093,300)	(1,520,414,100)	(1,517,059,600)	(+90,966,300)	(−3,354,500)
(By transfer, fiscal year 1980)		[2] *(1,146,800)*	*(754,000)*	*(+754,000)*	*(−392,800)*
CAPITAL OUTLAY					
Capital outlay	(164,347,500)	(256,397,800)	(247,897,800)	(+83,550,300)	(−8,500,000)
Total, District of Columbia funds (net)	(1,590,440,800)	(1,776,811,900)	(1,764,957,400)	(+174,516,600)	(−11,854,500)
(By transfer, fiscal year 1980)		[2] *(1,146,800)*	*(754,000)*	*(+754,000)*	*(−392,800)*

See footnotes at end of table.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR FISCAL YEAR 1980 AND BUDGET ESTIMATE AND AMOUNTS RECOMMENDED IN THE BILL FOR FISCAL YEAR 1981—Continued

[Fiscal year]

Agency and item (1)	New budget (obligational) authority, 1980 (enacted to date) (2)	Budget estimates of new (obligational) authority, 1981[1] (3)	New budget (obligational) authority recommended in bill (4)	Bill compared with— New budget (obligational) authority, 1980 (enacted to date) (5)	Bill compared with— Budget estimates of new (obligational) authority, 1981 (6)
RECAPITULATION					
Grand total, new budget (obligational) authority	$449,940,300	$528,557,100	$515,702,600	+$65,762,300	−$12,854,500
Consisting of:					
Temporary Commission on Financial Oversight of the District of Columbia	7,000,000			−7,000,000	
District of Columbia:					
Federal funds to the District of Columbia	442,940,300	528,557,100	515,702,600	+72,762,300	−12,854,500
District of Columbia funds (net)	(1,590,440,800)	(1,776,811,900)	(1,764,957,400)	(+174,516,600)	−11,854,500
(By transfer, fiscal year 1980)		[2] *(1,146,800)*	*(754,000)*	*(+754,000)*	*(−392,800)*

[1] Includes the following budget amendments for fiscal year 1981 submitted in H. Doc. 96-364:

Federal funds—inaugural expenses	$1, 330, 100
District of Columbia funds:	
Governmental direction and support	(7, 745, 400)
Economic development and regulation	(3, 484, 500)
Public safety and justice	(17, 390, 100)
Public education system	(47, 137, 700)
Human support services	(4, 225, 000)
Transportation services and assistance	(35, 410, 400)
Environmental services and supply (General Fund)	(10, 640, 400)
Personal services	(−3, 494, 700)
Repayment of loans and interest	(−133, 931, 800)
Demonstration expenses—Presidential Inauguration	(1, 330, 100)
Water and Sewer Fund: Department of Environmental Services	(28, 537, 100)
Total, operating expenses	(18, 474, 200)
Capital outlay	(66, 883, 100)
Total, H. Doc. 96- :	
Federal funds	1, 330, 100
District of Columbia funds	(85, 357, 300)

[2] Submitted as a reprograming proposal by letter dated July 18, 1980 from the Mayor.

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1272

FEDERAL CROP INSURANCE ACT OF 1980

AUGUST 28, 1980.—Ordered to be printed

Mr. FOLEY, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1125]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Federal Crop Insurance Act of 1980".

TITLE I—FEDERAL CROP INSURANCE PROGRAM

CAPITAL STOCK

SEC. *101.* (*a*) *Effective October 1, 1980, section 504*(*a*) *of the Federal Crop Insurance Act is amended by striking out "$200,000,000" and inserting in lieu thereof "$500,000,000".*

(*b*) *Section 504 of the Federal Crop Insurance Act is amended by adding after subsection* (*c*) *a new subsection* (*d*) *as follows:*

"(*d*) *Within thirty days after the date of enactment of the Federal Crop Insurance Act of 1980, the Secretary of the Treasury shall cancel, without consideration, receipts for payments for or on account of the stock of the Federal Crop Insurance Corporation outstanding on such date of enactment and such receipts shall cease to be liabilities of the Corporation.".*

BOARD OF DIRECTORS: MEMBERSHIP AND COMPENSATION

SEC. 102. (a) Section 505(a) of the Federal Crop Insurance Act is amended by—

(1) amending the second sentence to read as follows: "The Board shall consist of the manager of the Corporation, the Under Secretary or Assistant Secretary of Agriculture responsible for the Federal crop insurance program, the Under Secretary or Assistant Secretary of Agriculture responsible for the farm credit programs of the Department of Agriculture, one person experienced in the crop insurance business who is not otherwise employed by the Federal Government, and three active farmers who are not otherwise employed by the Federal Government."; and

(2) adding at the end thereof a new sentence as follows: "The Secretary, in appointing the three active farmers who are not otherwise employed by the Federal Government, shall ensure that such members are policyholders and are from different geographic areas of the United States, in order that diverse agricultural interests in the United States are at all times represented on the Board.".

(b) Section 505(b) of the Federal Crop Insurance Act is amended by striking out "three" wherever that word appears therein and inserting in lieu thereof "four".

(c) The second sentence of section 505(c) of the Federal Crop Insurance Act is amended to read as follows: "The Directors of the Corporation who are not employed by the Federal Government shall be paid such compensation for their services as Directors as the Secretary of Agriculture shall determine, but such compensation shall not exceed the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 of the United States Code when actually employed, and actual necessary traveling and subsistence expenses, or a per diem allowance in lieu of subsistence expenses, as authorized by section 5703 of title 5 of the United States Code for persons in Government service employed intermittently, when on the business of the Corporation away from their homes or regular places of business.".

GENERAL POWERS FOR THE CORPORATION

SEC. 103. Section 506 of the Federal Crop Insurance Act is amended by—

(1) in subsection (c), striking out "make contracts and";

(2) amending subsection (d) to read as follows:

"(d) subject to the provisions of section 508(c), may sue and be sued in its corporate name, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. The district courts of the United States, including the district courts of the District of Columbia and of any territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation. The Corporation may intervene in any court in any suit, action, or proceeding in which it has an interest. Any suit against the Corporation shall be brought in the District of Co-

lumbia, or in the district wherein the plaintiff resides or is engaged in business;";

(3) in subsection (f), striking out "free"; and

(4) at the end of subsection (j), striking out the period and inserting in lieu thereof "; and", and adding at the end of section 506 a new subsection (k) as follows:

"(k) may enter into and carry out contracts or agreements necessary in the conduct of its business, as determined by the Board. State and local laws or rules shall not apply to contracts or agreements of the Corporation or the parties thereto to the extent that such contracts or agreements provide that such laws or rules shall not apply, or to the extent that such laws or rules are inconsistent with such contracts or agreements.".

USE OF PRIVATE INSURANCE COMPANIES AND OTHER FEDERAL AGENCIES

Sec. 104. Section 507 of the Federal Crop Insurance Act is amended by—

(1) amending subsection (c) to read as follows:

"(c) In the administration of this title, the Board shall, to the maximum extent possible, (1) establish or use committees or associations of producers and make payments to them to cover the administrative and program expenses, as determined by the Board, incurred by them in cooperating in carrying out this title, (2) contract with private insurance companies and reimburse such companies for the administrative and program expenses, as determined by the Board, incurred by them, under terms and provisions and rates of compensation consistent with those generally prevailing in the insurance industry and (3) encourage the sale of Federal crop insurance through licensed private insurance agents and brokers and give the insured the right to renew such insurance for successive terms through such agents and brokers, in which case the agent or broker shall be reasonably compensated from premiums paid by the insured for such sales and renewals recognizing the function of the agent or broker to provide continuing services while the insurance is in effect: Provided, That such compensation shall not be included in computations establishing premium rates. The Board shall provide such agents and brokers with indemnification, including costs and reasonable attorney fees, from the Corporation for errors or omissions on the part of the Corporation or its contractors for which the agent or broker is sued or held liable, except to the extent the agent or broker has caused the error or omission."; and

(2) adding a new subsection (f) as follows:

"(f) The Board should use, to the maximum extent possible, the resources, data, boards, and the committees of (1) the Soil Conservation Service, in assisting the Board in the classification of land as to risk and production capability and in the development of acceptible conservation practices; (2) the Forest Service, in assisting the Board in the development of a timber insurance plan; (3) the Agricultural Stabilization and Conservation Service, in assisting the Board in the determination of individual producer yields and in serving as a local contact point for farmers where the Board deems necessary; and (4) other Federal agencies in any way the Board deems necessary in carrying out this title.".

FEDERAL CROP INSURANCE EXPANSION AND EXTENT OF COVERAGE

Sec. 105. Effective with respect to the 1981 and subsequent crops, subsection (a) of section 508 of the Federal Crop Insurance Act is amended by—

(1) striking out all that follows the subsection designation down through the end of the sixth sentence, which begins, "Reinsurance for private insurance companies . . .", and inserting in lieu thereof the following: "If sufficient actuarial data are available, as determined by the Board, to insure producers of agricultural commodities grown in the United States under any plan or plans of insurance determined by the Board to be adapted to the agricultural commodity involved. Such insurance shall be against loss of the insured commodity due to unavoidable causes, including drought, flood, hail, wind, frost, winterkill, lightning, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board. Except in the case of tobacco, insurance shall not extend beyond the period the insured commodity is in the field. For the purpose of the foregoing sentence, in the case of aquacultural species, the term 'field' means the environment in which the commodity is produced.";

(2) striking out the seventh sentence, which begins, "Any insurance offered against loss in yield . . .", and inserting in lieu thereof the following: "Any insurance offered against loss in yield shall make available to producers protection against loss in yield that covers 75 per centum of the recorded or appraised average yield of the commodity on the insured farm for a representative period (subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, which are subject to the same conditions, may be fair and just). In addition, the Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 per centum of the recorded or appraised average yield, as adjusted. The Corporation shall not make available to producers any level of coverage in excess of 75 per centum of the recorded or appraised average yield, as adjusted. One of the price elections offered shall approximate (but be not less than 90 per centum of) the projected market price for the commodity involved, as determined by the Board."; and

(3) striking out the ninth sentence, which begins "Counties selected by the Board . . .".

HAIL AND FIRE INSURANCE CREDIT PREMIUM SUBSIDY REINSURANCE, AND SPECIFIC RISK PROTECTION

Sec. 106. Effective with respect to the 1981 and subsequent crops, section 508 of the Federal Crop Insurance Act is amended by—

(1) amending subsection (b) to read as follows:

"(b) (1) To fix adequate premiums for insurance at such rates as the Board deems actuarially sufficient to cover claims for losses on such insurance and to establish as expeditiously as possible a reasonable reserve against unforeseen losses.

"(2) The producer may elect to have deleted from the Corporation's policy of insurance the coverage against losses caused by hail and fire and to obtain coverage therefor from other than a Federal insurer. Upon notice in writing of such election to the Corporation and submission of evidence of such substitute coverage on the commodities insured by the Corporation in a dollar amount not less than that provided by the Corporation's policy of insurance, the producer's premium, as calculated by the Corporation, shall be reduced by an amount equal to 40 per centum of the prevailing average county hail and fire insurance premium charged by other than Federal insurers for the dollar amount of the coverage provided by the Corporation's policy of insurance, as determined by the Corporation: Provided, That the producer's premium shall not be reduced by less than 15 per centum nor more than 30 per centum: Provided further, That, notwithstanding the preceding provisions of this sentence, the producer's premium shall not be reduced by an amount that exceeds the premium for the substitute coverage of a dollar amount equal to that provided by the Corporation's policy of insurance. Any premium reduction in excess of the amount of premium that the Corporation determines would have been necessary for the Corporation to charge in order to cover indemnities actually paid by other than Federal insurers for hail and fire coverage deleted from the Corporation's policy of insurance shall be regarded as premium paid by the Corporation.

"(3) For the purpose of encouraging the broadest possible participation in the insurance program, 30 per centum of each producer's premium (reduced, where applicable, for hail and fire exclusion, or State or State agency subsidy), as calculated by the Corporation on any coverage under the Corporation's policy of insurance up to a maximum of 65 per centum of the recorded or appraised average yield, as adjusted, shall be paid by the Corporation.

"(4) The producer's premium, or share thereof, shall be collected at such time or times, and shall be secured in such manner, as the Board may determine.

"(5) The Board may enter into agreements with any State or agency of a State under which such State or agency may pay to the Corporation additional premium subsidy to further reduce the portion of the premium paid by farmers in such State.

"(6) With respect to any crop insurance covering the 1981 crop of wheat, feed grains, upland cotton, or rice, a producer shall not be eligible for a partial payment of the premium by the Corporation under paragraph (3) of this subsection for such commodity if the producer elects to make the acreage of the commodity eligible for payments under the disaster payment provisions for wheat, feed grains, upland cotton, and rice of the Agricultural Act of 1949 (as amended effective for the 1981 crops): Provided further, That a producer who is not eligible for a partial payment of premium by the Corporation under this subsection because of the producer's election to make the acreage of the commodity involved eligible for disaster payments in 1981 shall remain eligible to purchase Federal crop insurance on the 1981 acreage of the commodity at the full cost of the premium.";

(2) amending subsection (c) to read as follows:

"(c) To adjust and pay claims for losses under rules prescribed by the Board. In the event that any claim for indemnity under the provi-

sions of this title is denied by the Corporation, an action on such claim may be brought against the Corporation in the United States district court for the district in which the insured farm is located: Provided, That no suit on such claim may be allowed under this section unless it shall have been brought within one year after the date when notice of denial of the claim is mailed to and received by the claimant.";

(3) striking out subsection (d), and redesignating subsection (e) as subsection (d); and

(4) striking out subsection (f) and adding new subsections (e), (f), (g) and (h) as follows:

"(e) And directed, notwithstanding any other provision of this title, to provide reinsurance, to the maximum extent practicable, upon such terms and conditions as the Board may determine to be consistent with subsections (a) and (b) of this section and sound reinsurance principles, to insurers including private insurance companies or pools of such companies, reinsurers of such companies, or State or local governmental entities, including any political subdivisions thereof, that insure producers of any agricultural commodity under a plan or plans acceptable to the Corporation. A test program of such reinsurance shall be made available, to the maximum extent possible, to begin not later than with the 1982 crops. In order to provide equity among producers purchasing crop insurance, whenever the Corporation provides reinsurance under this subsection to any such insurers, the Corporation shall pay a portion of each producer's premium for such insurance so reinsured. Each such payment shall cover the same per centum of the premium, and be subject to the same restrictions regarding payments of premiums for crop insurance on commodities, as provided in subsection (b) of this section for Federal partial payments of Federal crop insurance premiums. The Corporation shall also pay operating and administrative costs to insurers of policies on which the Corporation provides reinsurance to the same extent that such costs are covered by the Corporation on the Corporation's policies of insurance. Insurers of policies on which reinsurance is provided shall make use of licensed private insurance agents and brokers on the same basis as provided for policies of the Corporation under section 507(c)(3) of this title, except that the provisions for compensating agents and brokers from premiums paid by the insured shall not apply.

"(f) To provide insurance or reinsurance for production of agricultural commodities in the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands in the same manner as provided in this section for production of agricultural commodities in the United States.

"(g) To offer specific risk protection programs including, but not limited to, prevented planting, wildlife depredation, tree damage and disease, and insect infestation programs under such terms and conditions as the Board may determine: Provided, That no program may be undertaken if insurance for the specific risk involved is generally available from private companies.

"(h) To include appreciation (including interest charges) as an insurable cost of production in calculating premiums and indemnities in connection with insurance on yields of timber and forests.".

RESEARCH, SURVEYS, AND PILOT PROGRAMS

SEC. 107. (a) Section 506(h) of the Federal Crop Insurance Act is amended to read as follows:

"(h) shall assemble data for the purpose of establishing sound actuarial bases for insurance on agricultural commodities;".

(b) Section 508 of the Federal Crop Insurance Act is amended by adding a new subsection (i) as follows:

"(i) To conduct research, surveys, pilot programs, and investigations relating to crop insurance and agriculture-related risks and losses including, but not limited to, insurance on losses involving reduced forage on rangeland caused by drought and by insect infestation, livestock poisoning and disease, destruction of bees due to the use of pesticides, and other unique problems of special risk related to, but not limited to, fruits, nuts, vegetables, aquacultural species, forest industry needs (including appreciation), and other agricultural products as determined by the Board: Provided, That no such programs may be undertaken if insurance protection against such risks is generally available from private companies. Beginning in the 1981 crop year and ending after the 1985 crop year, the Corporation shall also conduct a pilot program of individual risk underwriting of crop insurance in not less than twenty-five counties. Under this pilot program, to the extent that appropriate yield data are available, the Corporation shall make available to producers in such counties crop insurance under this title based on personalized rates and with guarantees determined from the producer's actual yield history. After the completion of any pilot program under this subsection, the Corporation shall evaluate the pilot program and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report of the operations of the pilot program, including its evaluation of the pilot program and its recommendations with respect to implementing the program on a national basis.".

DELETION OF AUTHORITY FOR ADVISORY COMMITTEES

SEC. 108. Section 515 of the Federal Crop Insurance Act is repealed.

APPROPRIATIONS FOR OPERATING AND ADMINISTRATIVE EXPENSES

SEC. 109. Effective October 1, 1980, section 516(a) of the Federal Crop Insurance Act is amended to read as follows:

"SEC. 516. (a) There are hereby authorized to be appropriated such sums as may be necessary to cover the operating and administrative costs of the Corporation, including agents' and brokers' commissions, interest on Treasury notes and other obligations, partial premium payments by the Corporation, and the direct cost of loss adjusters for crop inspections and loss adjustments, which shall be alloted to the Corporation in such amounts and at such time or times as the Secretary of Agriculture may determine. Expenses in connection with agents' and brokers' commissions, interest on Treasury notes and other obligations, partial premium payments by the Corporation, and the direct cost of loss adjusters for crop inspections and loss adjust-

ments may be paid from premium income and other Corporation funds, and any such payments may be restored by appropriations in subsequent years. The Corporation may not employ more than two hundred additional permanent full-time employees, in excess of the number of full-time employees employed by the Corporation on the effective date of the Federal Crop Insurance Act of 1980, to implement the provisions of this title, except in the case of, and only during, emergencies.".

EMERGENCY FUNDING IN CASE OF INSUFFICIENCY

Sec. 110. Effective October 1, 1980, section 516 of the Federal Crop Insurance Act is amended by adding new subsections (c) and (d) as follows:

"(c)(1) If at any time the moneys available to the Federal Crop Insurance Corporation are insufficient to enable the Corporation to discharge its responsibility of indemnifying producers for losses under this title, the Corporation may, upon majority vote of its Board of Directors, request the Secretary of Agriculture to use the funds of the Commodity Credit Corporation to make timely payment of indemnities to producers. Upon receiving such a request, the Secretary of Agriculture may use the funds of the Commodity Credit Corporation to meet obligations to indemnify producers for losses under this title. The Secretary's authority to use the funds of the Commodity Credit Corporation for the purposes of this subsection shall expire one year after the date on which the authority is first used.

"(2) The authority to make commitments under this subsection, in excess of funds available to the Commodity Credit Corporation under section 4 of the Commodity Credit Corporation Charter Act and the Act of October 11, 1978 (92 Stat. 1073), shall be effective for any fiscal year only to the extent provided by appropriation Acts.

"(d) Except as provided in subsection (c), if at any time the moneys available to the Federal Crop Insurance Corporation are insufficient to enable the Corporation to discharge its responsibility of indemnifying producers for losses under this title, the Corporation may issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Corporation from moneys available from premiums or the issuance of capital stock under section 504 of this title. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act and the purpoes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by the Secretary of the Treasury under this subsection. All redemptions, purchases, and

sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The borrowing authority provided for in this subsection may be exercised by the Corporation only to such extent or in such amounts as are provided in appropriation Acts.".

AGRICULTURAL COMMODITY

SEC. 111. Section 518 of the Federal Crop Insurance Act is amended to read as follows:

"SEC. 518. 'Agricultural commodity', as used in this title, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, aquacultural species (including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment), or any other agricultural commodity, excluding livestock and stored grain, determined by the Board under subsection (a) or (i) of section 508 of this title, or any one or more of such commodities, as the context may indicate.".

EFFECTIVE DATE

SEC. 112. Except as otherwise provided in this Act, the provisions of this Act amending the Federal Crop Insurance Act shall become effective on the date of enactment of this Act.

TITLE II—DISASTER PAYMENTS

PREVENTED PLANTING DISASTER AND FARM DISASTER PAYMENTS FOR THE 1981 CROPS

SEC. 201. (a) Section 101(h)(4) of the Agricultural Act of 1949, as added effective for the 1978 through 1981 crops of rice, is amended by—

(1) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of rice," and inserting in lieu thereof "Except as otherwise provided in subparagraph (D) of this paragraph, effective with respect to the 1978 through 1981 crops of rice,";

(2) in subparagraph (C), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of rice," and inserting in lieu thereof "Except as otherwise provided in subparagragh (D) of this paragraph, effective with respect to the 1978 through 1981 crops of rice,"; and

(3) redesignating subparagraph (D) as subparagraph (E) and inserting immediately after subparagraph (C) a new subparagraph (D) as follows:

"(D) With respect to the 1981 crop of rice, cooperators on a farm shall not be eligible for disaster payments under this paragraph if the cooperators elect to cover the rice acreage with crop insurance, part of the premium for which is paid by the Federal

Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act.".

(b) Section 103(f)(5) of the Agricultural Act of 1949, as added effective for the 1978 through 1981 crops of upland cotton, is amended by—

(1) in subparagraph (A), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of upland cotton," and insering in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of upland cotton,";

(2) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of upland cotton," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of upland cotton,"; and

(3) adding at the end thereof a new subparagraph (C) as follows:

"(C) With respect to the 1981 crop of upland cotton, producers on a farm shall not be eligible for disaster payments under this paragraph if the producers elect to cover the upland cotton acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act.".

(c) Section 105A(b)(2) of the Agricultural Act of 1949, as added effective for the 1977 through 1981 crops of feed grains, is amended by—

(1) in subparagraph (A), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of feed grains," and inserting in lieu thereof "except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of feed grains,";

(2) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of feed grains," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of feed grains,"; and

(3) redesignating subparagraph (C) as subparagraph (D) and inserting immediately after subparagraph (B) a new subparagraph (C) as follows:

"(C) With respect to the 1981 crop of feed grains, producers on a farm shall not be eligible for disaster payments under this paragraph if the producers elect to cover the feed grain acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act.".

(d) Section 107A(b)(2) of the Agricultural Act of 1949, as added effective for the 1977 through 1981 crops of wheat, is amended by—

(1) in subparagraph (A), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of wheat," and inserting in lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of wheat,";

(2) in subparagraph (B), striking out "Effective only with respect to the 1978, 1979, and 1980 crops of wheat," and inserting in

lieu thereof "Except as otherwise provided in subparagraph (C) of this paragraph, effective with respect to the 1978 through 1981 crops of wheat,"; and

(3) redesignating subparagraph (C) as subparagraph (D) and inserting immediately after subparagraph (B) a new subparagraph (C), as follows:

"(C) With respect to the 1981 crop of wheat, producers on a farm shall not be eligible for disaster payments under this paragraph if the producers elect to cover the wheat acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508(e) of the Federal Crop Insurance Act.".

NOTICE TO PRODUCERS OF RIGHT TO ELECT SUBSIDIZED CROP INSURANCE OR DISASTER PAYMENTS ON THE 1981 CROPS

SEC. 202. The Secretary of Agriculture, after consultation with the Board of Directors of the Federal Crop Insurance Corporation, shall, at least sixty days prior to the beginning of the planting of the 1981 crops of wheat, feed grains, upland cotton, and rice, or thirty days after the date of enactment of this Act, whichever is the later, notify producers of those commodities of their right to elect, with respect to the 1981 crop, between (1) declaring the farm acreage of the respective commodity eligible for disaster payments under the Agricultural Act of 1949, or (2) covering such farm acreage with crop insurance, part of the premium for which is paid by the Federal Crop Insurance Corporation under the provisions of section 508(b)(3) or 508 (e) of the Federal Crop Insurance Act. Such notice shall include a statement of the percent of crop insurance premium that will be paid by the Corporation.

And the House agree to the same.

THOMAS S. FOLEY,
ED JONES,
TOM HARKIN,
JERRY HUCKABY,
DAN GLICKMAN,
GEORGE E. BROWN, Jr.,
FRED RICHMOND,
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Managers on the Part of the House.
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EDWARD ZORINSKY,
JESSE HELMS,
DICK LUGAR,
THAD COCHRAN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1125) to improve and expand the Federal crop insurance program, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report. The differences between the Senate bill and the House amendment and the substitute agreed to in the conference are noted in the following outline, except for conforming, clarifying, and technical changes:

(1) *Membership on the Board of Directors of the Federal Crop Insurance Corporation*

Both the *Senate* bill and the *House* amendment increase the membership of the Board of Directors (hereinafter referred to as the "Board") of the Federal Crop Insurance Corporation (hereinafter referred to as the "Corporation") from five to seven persons.

(a) The *Senate* bill provides that the Board will be composed of—

(i) three persons from the Department of Agriculture—the manager of the Corporation, the Under Secretary or Assistant Secretary of Agriculture responsible for the Federal crop insurance program, and the Under Secretary or Assistant Secretary of Agriculture responsible for the farm credit programs of the Department of Agriculture;

(ii) a person (not a Federal Government employee) who is experienced in the crop insurance business; and

(iii) three farmers who are not Federal Government employees.

The *House* amendment provides that the Board will be composed of—

(i) three persons from the Department of Agriculture—the manager of the Corporation and two employees of the Department (the *House* amendment does not specify their positions in the Department);

(ii) two persons (not Federal Government employees) who are experienced in the crop insurance business; and

(iii) two farmers who are not Federal Government employees.

The *conference substitute* adopts the *Senate* provision.

(b) The *House* amendment requires that the farmer members be active farmers and policyholders.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(2) *Suites by or against the Federal Crop Insurance Corporation*

(a) The *Senate* bill deletes a provision in existing law generally authorizing suits by or against the Corporation in any State court having general jurisdiction. It also provides that any suit against the Corporation in the Federal courts must be brought in the District of Columbia or the district in which the plaintiff resides or is engaged in business.

The *House* amendment contains no comparable provision.

(b) The *Senate* bill deletes a provision in existing law specifically authorizing persons to bring actions against the Corporation to recover indemnity claims denied by the Corporation in any State court of general jurisdiction sitting in the district or county in which the insured's farm is located, thereby limiting jurisdiction over such actions to the United States district court for the district in which the insured farm is located.

The *House* amendment contains no comparable provision.

The *conference* substitute adoptes the *Senate* provision.

(3) *Authority of the Federal Crop Insurance Corporation to enter into contracts and agreements*

The *House* amendment provides that State and local laws or rules will not apply to contracts or agreements of the Corporation or the parties thereto to the extent that the contracts or agreements so provide or to the extent that State and local laws are inconsistent with such contracts or agreements.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision

(4) *Use of private insurance companies and agents*

(a) The *Senate* bill provides that, in administering the Federal Crop Insurance Act, the Board *may*—

(i) establish or use committees or associations of producers; and

(ii) contract with private insurance companies.

The *House* amendment provides that, in administering the Act, the Board *shall*, to the maximum extent possible—

(i) establish or use committees or associations of producers;

(ii) contract with private insurance companies; and

(iii) encourage the sale of Federal crop insurance through licensed private insurance agents and brokers, and give the insured the right to renew the insurance for successive terms through such agents and brokers.

The *conference substitute* adopts the *House* provision. The *conferees* intend that the authority to contract with private insurance companies not be used to make any one insurance company the exclusive selling or servicing agent or underwriter for Federal crop insurance.

(b) The *Senate* bill provides that the Board may make payments to private insurance companies with which it has contracted to cover their administrative and program expenses.

The *House* amendment provides that the Board shall, to the maximum extent possible, reimburse private insurance companies for administrative and program expenses incurred by them under terms and provisions and rates of compensation consistent with those generally prevailing in the industry.

The *conference substitute* adopts the *House* provision.

(c) The *House* amendment provides that the Board shall, to the maximum extent possible, provide agents and brokers reasonable compensation for sales and renewals of Federal crop insurance, recognizing their function to provide continuing service while the insurance is in effect.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision with a modification clarifying that compensation for agents and brokers will be made from premiums paid by farmers for crop insurance coverage, but that agent and broker compensation will not be included in computing premium rates.

(d) The *House* amendment requires the Board to provide agents and brokers indemnification (including costs and reasonable attorney fees) for errors or omissions by the Corporation or its contractors for which the agent or broker is held liable, except to the extent the agent or broker caused the error or omission.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(5) *Use of resources*

The *House* amendment encourages the Board to use the resources of (1) the Soil Conservation Service in assisting in land classification of risk and production capability and in developing acceptable conservation practices; (2) the Forest Service in assisting in the development of a timber insurance plan; (3) the Agricultural Stabilization and Conservation Service in assisting in the determination of individual producer yields and in serving as a local contact point for farmers; and (4) other Federal agencies in any way the Board deems necessary.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision. It is the intent of the *conferees* that this provision not be used as authority for requiring the adoption of conservation measures developed by the Soil Conservation Service or other governmental agencies as a condition for obtaining Federal crop insurance coverage or receiving indemnities for losses. However, the *conferees* understood that, under existing law, losses due to the failure of a farmer to follow established good farming practices are not covered by Federal crop insurance and that the Corporation now considers, and will continue to consider, the conservation measures present on a farm in determining the risk to be covered and the premium to be charged for the farm.

(6) *Expansion of the Federal crop insurance program*

(a) The *Senate* bill deletes, effective with respect to the *1980* and subsequent crops, the limitations in existing law on the number of commodities and counties that may be covered by the Federal crop insurance program and the limitation on the number of counties in which reinsurance of private insurance companies may be offered.

The *House* amendment deletes the same provisions effective with respect to the *1981* and subsequent crops.

The *conference substitute* adopts the *House* provision.

(b) The *House* amendment provides that insurance covering aquacultural species will be exempt from the requirement that Federal crop insurance not extend beyond the period that the insured commodity is in the field.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision by clarifying that, with respect to aquacultural species, the phrase "in the field" means in the environment in which the aquacultural species is produced.

(7) *Extent of Federal crop insurance coverage*

(a) The *Senate* bill requires that any Federal crop insurance protecting against loss in yield must make available to producers (i) coverage for 75 percent of the recorded or appraised average yield for the farm on the commodity insured and, (ii) in addition, lesser levels of yield coverage.

The *House* amendment requires that a minimum of three levels of yield coverage be provided: 50 percent, 65 percent, and 75 percent of the recorded or appraised average yield; and in addition, the *House* amendment requires the Corporation to offer other levels of yield coverage (not in excess of 75 percent of average yield) to be selected by the producer.

The *conference substitute* adopts the *Senate* provision with a modification requiring the Corporation to offer coverage for 50 percent of average yield as one of the lesser levels of yield coverage (and making it clear that the Corporation could not offer coverage in excess of 75 percent of average yield).

(b) Both the *Senate* bill and *House* amendment retain existing law, which requires that yield coverage be based on the producer's yield for a representative period, subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, which are subject to the same conditions, may be fair and just.

The *House* amendment, however, adds a requirement that yield coverage also be offered based on the actual five-year production history for the farm, if available, and if not, on the average for the county in which the farm is located.

The *Senate* bill contains no comparable provision.

The *conference substitute* deletes the *House* provision.

(c) The *Senate* bill requires that Federal crop insurance make available coverage (per unit of production) equal to the highest of—

(i) the applicable target price for the commodity involved, if any;

(ii) the applicable loan rate for the commodity involved, if any; or

(iii) the projected market price for the commodity involved.

The Corporation would also be required to make available to producers lesser price selections per unit of production.

The *House* amendment requires that one of the price elections offered must approximate (but be not less than 90 percent of) the projected market price for the commodity involved.

The *conference substitute* adopts the *House* provision.

(d) The *Senate* bill provides that Federal crop insurance will not cover losses due to failure of the producer to reseed to the same crop *or an approved substitute crop* where it is customary to reseed.

The *House* amendment retains existing law under which the exclusion of coverage is limited to losses due to failure of the producer to reseed to the same crop.

The *conference substitute* deletes the *Senate* provision.

(8) *Federal crop insurance premiums*

(a) The *House* amendment provides that producers may elect to have deleted from Federal crop insurance policies coverage against hail and fire risks and obtain equivalent hail and fire coverage from a private insurer; and that, for any producer who makes such election, the Federal crop insurance premium will be reduced by 25 percent, but not to exceed the premium for the substitute coverage.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision with a modification relating to the determination of the amount of the premium reduction.

Under the modification, the Federal crop insurance premium for a farmer who elects to obtain hail and fire coverage from a nonfederal insurer (including a State operated program) would be reduced by an amount equal to 40 percent of the prevailing average county insurance premium charged by nonfederal insurers for full coverage hail and fire insurance that provides the same amount of protection as would have been provided under the Federal crop insurance policy. However, a farmer's premium could not be reduced by less than 15 percent, nor more than 30 percent, of the full cost of Federal crop insurance coverage. In no event could the premium be reduced by an amount that exceeds the premium charged by the nonfederal insurer for comparable coverage. Any premium reduction in excess of the portion of the premium that the Corporation determines would have been necessary for the Corporation to charge in order to cover indemnities actually paid by nonfederal insurers for hail and fire coverage deleted from the Corporation's policy of insurance would be regarded as a premium paid by the Corporation.

(b) The *Senate* bill provides that the Corporation must provide a subsidy (of not less than 20 percent nor more than 40 percent, as determined by the Board) of each producer's premium, the amount of the subsidy to be applied uniformly among producers regardless of the percent of average production covered or price selection chosen.

The *House* amendment provides for a subsidy of 30 percent of each producer's premium on that portion of each policy insuring up to a maximum of 65 percent of yield.

The *conference substitute* adopts the *House* provision.

(c) Both the *Senate* bill and *House* amendment provide that any producer of 1981 crop wheat, feed grains, upland cotton, or rice shall not be eligible to receive a premium subsidy from the Corporation if he elects to make his acreage eligible for disaster payments under the Agricultural Act of 1949.

The *Senate* bill provides that any such producer who elects to make his acreage eligible for disaster payments may purchase Federal crop insurance for the commodity at the full cost of the premium.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(d) The *House* amendment provides that States and State agencies may provide additional premium subsidies to reduce further the cost of insurance to farmers.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(e) The *House* amendment provides that operators of small farms may receive an additional or graduated premium subsidy. Eligibility for classification as a small farm would be based on the maximum potential exposure of the Corporation on all commodities eligible for insurance at a limit determined by the Board.

The *Senate* bill contains no comparable provision.

The *conference substitute* deletes the *House* provision.

(9) *Payment and adjustment of crop insurance claims*

The *Senate* bill changes existing law under which indemnity claims may be paid either in cash or in the commodity by deleting authority for indemnity claims to be paid in the commodity. The *Senate* bill also deletes authority in existing law for determining the indemnity on the same price basis at which the premium is calculated.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(10) *Deletion of the authority of the Federal Crop Insurance Corporation to purchase agricultural commodities*

The *Senate* bill deletes from existing law a provision that authorizes the Corporation to purchase, handle, store, insure, provide storage facilities for, and sell agricultural commodities.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(11) *Reinsurance*

(a) The *Senate* bill authorizes the Corporation to reinsure private insurance companies and government entities that provide crop insurance to farmers under contracts acceptable to the Corporation.

The *House* amendment directs the Corporation to provide such reinsurance, to the maximum extent practicable, to private insurance companies, reinsurers of such companies, and State or local government entities.

The *conference substitute* adopts the *House* provision.

(b) The *House* amendment requires the Corporation to make available a test program of reinsurance, to the maximum extent possible, to begin not later than with the 1982 crops.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(c) The *House* amendment requires the Corporation to pay operating and administrative costs to insurers of policies that are reinsured to the same extent that such costs are covered by the Corporation's policies of insurance.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(d) The *House* amendment requires insurers of policies on which reinsurance is provided to make use of licensed private agents and brokers on the same basis as provided for the crop insurance policies of the Corporation.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(12) *Trust Territory of the Pacific Islands*

The *House* amendment authorizes the Corporation to provide crop insurance or reinsurance of agricultural commodities in the Trust Territory of the Pacific Islands in the same manner as for producers in the United States.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(13) *Insurance on timber and forests*

The *Senate* bill provides that appreciation (including interest charges) may be included as an insurable cost of production in calculating premiums and indemnities for insurance on yields of timber and forests.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision.

(14) *Program funding*

(a) Effective October 1, 1980, the *Senate* bill deletes the provision in existing law limiting annual appropriations for the Corporation's expenses to $12 million, and, in lieu thereof, generally authorizes appropriations to cover the Corporation's operating and administrative expenses.

Effective on enactment of the bill, the *House* amendment also deletes the $12 million limitation and generally authorizes appropriations to cover the Corporation's operating and administrative expenses, but specifically includes, as an expense item to be covered by such appropriations, interest on Treasury notes and other obligations.

The *conference* substitute adopts the *House* provision with a modification making it effective October 1, 1980.

(b) The *Senate* bill provides that expenses in connection with agents' commissions and the direct costs of loss adjusters may be paid from insurance premium funds, which payments may later be restored to the Corporation by appropriations.

The *House* amendment provides that such expenses may be paid from premium income and other Corporation funds, and in addition, provides that expenses in connection with the purchase, transportation, handling, or sale of agricultural commodities, interest on Treasury notes and other obligations, and Federal premium payments may be paid from premium income and other Corporation funds. Payments for any such expenses may be restored by appropriations in subsequent years.

The *conference substitute* adopts the *House* provision with a modification deleting the authority for such payment of expenses in connection with the purchase, transportation, handling, or sale of agricultural commodities. The *conference substitute* deletes authority under existing law for the Corporation to purchase, transport, handle, and sell agricultural commodities (see item 10)

(15) *Limitation on additional Federal Crop Insurance Corporation employees*

The *House* amendment limits the number of additional permanent full-time personnel that the Corporation may hire to implement the bill (except in the case of emergencies) to not more than 200 personnel in addition to those employed by the Corporation on the effective date of the bill.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House provision.*

(16) *Borrowing authority*

The *Senate* bill authorizes the Secretary of Agriculture to use funds of the Commodity Credit Corporation to indemnify producers for losses, and otherwise in discharging the responsibilities of the Federal

Crop Insurance Corporation whenever the Federal Crop Insurance Corporation's funds are insufficient to cover other program expenses. The *Senate* bill provides that the authority of the Secretary to make commitments of Commodity Credit Corporation funds under the bill in excess of the $20 billion now available to the Commodity Credit Corporation to carry out its functions will be effective only to the extent provided by appropriation Acts.

The *House* amendment provides that, if Federal Crop Insurance Corporation funds are insufficient to discharge its responsibilities for indemnifying producers for losses, the Corporation must borrow from, and issue notes or other obligations to, the Secretary of the Treasury. The obligations will bear interest at rates not less than the cost of money to the Government (for obligations of comparable maturity) during the month preceding their date of issuance. The obligations would be redeemed with money available from premium funds or the issuance of capital stock of the Corporation. The *House* amendment provides that the authority of the Federal Crop Insurance Corporation to borrow from the Treasury may be exercised only to the extent provided for in appropriation Acts.

The *conference substitute* adopts both the *Senate* and *House* provisions with modifications.

Under the modification of the *Senate* provision, the Secretary of Agriculture could use the funds of the Commodity Credit Corporation only to meet obligations of the Federal Crop Insurance Corporation to indemnify producers for losses and only after the Federal Crop Insurance Corporation has, by a majority vote of its Board, requested the use of such funds to make timely payment of indemnities to producers. The authority of the Secretary to use Commodity Credit Corporation funds would expire one year after the date on which the authority is first used.

Under the modification of the *House* provision, the Federal Crop Insurance Corporation would be authorized, but not required, to borrow from, and issue notes and other obligations to, the Secretary of the Treasury as necessary to meet its obligations to indemnify producers for losses.

(17) *Sunset provision*

The *House* amendment provides that, effective October 1, 1983, appropriations and borrowings from the Treasury for the Federal crop insurance program may not exceed such amounts as may be authorized by law after the date of enactment of the bill.

The *Senate* bill contains no comparable provision.

The *conference substitute* deletes the *House* provision.

(18) *Pilot programs*

(a) The *Senate* bill requires the Corporation to conduct a pilot program of individual risk underwriting of crop insurance in at least 25 counties during the period beginning with the 1981 crops and ending with the 1985 crops. Crop insurance under the pilot program will be based on personalized rates and actual yield history, to the extent that appropriate yield data are available.

The *House* amendment authorizes the Corporation to conduct research surveys, pilot programs, and investigations relating to crop insurance and agriculture-related risks and losses, including insurance on losses from reduced forage on rangeland resulting from drought and insect infestation, livestock poisoning and disease, destruction of bees from pesticides, and other unique problems of special risk related to fruits, nuts, vegetables, aquacultural species, forest industry needs (including appreciation), and other agricultural products. Such programs could be undertaken only if insurance protections against such risks is not generally available from private companies.

The *conference substitute* adopts both the *Senate* and *House* provisions.

(b) The *Senate* bill provides that, upon completion of the pilot program of individual risk underwriting, the Corporation must submit to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture a report on the pilot program and make recommendations on implementing a program of individual risk underwriting on a national basis.

The *House* amendment requires the Corporation to report annually to Congress the results of each pilot program and prohibits the Corportation from expanding beyond a pilot program without approval of the House Commitee ton Agriculure and the Senate Committee on Agriculture, Nutrition, and Forestry.

The *conference substitute* adopts the *Senate* provision and makes it applicable to all pilot programs authorized under the bill.

(19) *Definition of agricultural commodity*

The *House* amendment changes the definition of "agricultural commodity" to exclude livestock and stored grain and to add to those commodities specifically included by name in the definition the following: tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, nursey crops, nuts, native grass, and aquacultural species.

The *Senate* bill contains no comparable provision.

The *conference substitute* adopts the *House* provision.

(20) *Notification to producers of the 1981 crop of their right to elect between disaster payments or subsidized crop insurance*

The *Senate* bill requires the Secretary of Agriculture, after consultation with the Board, to notify producers of wheat, feed grains, upland cotton, and rice, at least sixty days prior to the beginning of the 1981 crop year, of their right to elect, with respect to the 1981 crop, between declaring their acreage of the commodity eligible for disaster payments under the Agricultural Act of 1949 or covering their acreage with crop insurance part of the premium for which is paid by the Corporation. The notice must state the percent of premium to be paid by the Corporation.

The *House* amendment contains no comparable provision.

The *conference substitute* adopts the *Senate* provision with a modification requiring that notification be given at least sixty days prior to the beginning of the planting of the 1981 crops of the respective commodities or thirty days after the enactment of the bill, whichever is later.

(21) *Special disaster program*

The *Senate* bill authorizes a special disaster payment program for the 1979 crops for producers of wheat, feed grains, upland cotton, and rice. The Secretary of Agriculture would be required to make a special disaster payment under the program if the Secretary determined that, as a result of drought, flood, or other natural disaster, or other condition (including inadequate fuel) beyond the control of the producers on a farm (or, in the case of rice, persons involved in producing rice on a farm), the producers on a farm (1) were prevented from planting any portion of the acreage intended for the commodity to the commodity (or, in the case of rice, any portion of the acreage allotments of producers on the farm or the farm acreage allotment to rice) and (2) planted another nonconserving crop on such acreage.

Under the provisions of the *Senate* bill, each such special disaster payment would be in an amount calculated by multiplying—

(a) the number of acres so affected (but, in the case of wheat, feed grains, and upland cotton, not to exceed the acreage planted to the commodity for harvest in the 1978 crop year, including any acreage that the producers were prevented from planting to the commodity or other nonconserving crops in lieu of the commodity because of drought, flood, or other natural disaster, or other condition beyond their control), by

(b) 75 percent of the yield established for the farm under the price support program, by

(c) 15 percent of the target price for the commodity for the 1979 crop year.

The *House* amendment contains no comparable provision.

The *conference substitute* deletes the *Senate* provision.

THOMAS S. FOLEY,
ED JONES,
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EDWARD ZORINSKY,
JESSE HELMS,
DICK LUGAR,
THAD COCHRAN,
Managers on the Part of the Senate.

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96TH CONGRESS } **HOUSE OF REPRESENTATIVES** { **REPORT**
2d Session } { No. 96–1273

PROVIDING FOR THE CONSIDERATION OF HOUSE JOINT RESOLUTION 601

SEPTEMBER 3, 1980.—Referred to the House Calendar and ordered to be printed

Mr. ZEFERETTI, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 778]

The Committee on Rules, having had under consideration House Resolution 778, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

○

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1274

PROVIDING FOR THE CONSIDERATION OF S. 658

September 3, 1980.—Referred to the House Calendar and ordered to be printed

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Mr. Moakley, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 779]

The Committee on Rules, having had under consideration House Resolution 779, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

○

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1275

PROVIDING FOR THE CONSIDERATION OF H.R. 6777

September 3, 1980.—Referred to the House Calendar and ordered to be printed

Mr. Derrick, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 780]

The Committee on Rules, having had under consideration House Resolution 780, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

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96TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPORT
{ No. 96-1276

MARKETING ORDERS FOR WALNUTS AND OLIVES

SEPTEMBER 3, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FOLEY, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 3765]

[Including Congressional Budget Office cost estimate]

The Committee on Agriculture, to whom was referred the bill (H.R. 3765), to provide that orders issued by the Secretary of Agriculture under the Agricultural Adjustment Act respecting development projects designed to assist, improve, or promote the marketing, distribution, and consumption or production of walnuts may provide for any form of marketing promotion, including paid advertising, and for crediting certain direct expenditures of handlers for such promotion, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That section 8c(6)(I) of the Agricultural Adjustment Act (7 U.S.C. 608c(6)(I)), as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) by inserting "walnuts," before "or tomatoes;" and

(2) by inserting "walnuts, olives," before "and Florida Indian River grapefruit".

and amend the title to read as follows:

To provide that marketing orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting walnuts may provide for any form of marketing promotion, including paid advertising, and that marketing orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities.

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BRIEF EXPLANATION

H.R. 3765, as reported by the Committee on Agriculture, would amend the Agricultural Marketing Agreement Act of 1937 to:

> Authorize the Federal marketing order for walnuts to include marketing promotion, including paid advertising, and provide for crediting the assessment obligation of each handler with any of such handler's direct marketing promotion expenditures as are authorized by the order; and
>
> Authorize the Federal marketing order for olives (which is authorized to include marketing promotion, including paid advertising) to provide for crediting the assessment obligation of each handler with any of such handler's direct marketing promotion expenditures as are authorized by the order.

PURPOSE AND NEED FOR THE LEGISLATION

H.R. 3765 amends the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, to authorize the addition of marketing promotion, including paid advertising, to the Federal marketing order for California walnuts. In addition, H.R. 3765 will permit the marketing orders for olives and walnuts to provide for crediting the assessement obligation of each handler with all or any portion of such handler's direct expenditures for marketing promotion, including paid advertising.

The Agricultural Marketing Agreement Act of 1937 allows research and promotion activities to be carried out for certain agricultural products covered by Federal marketing orders. Authority to establish market research and development projects was added to the Act in 1954. In 1962, the act was amended to provide for marketing promotion, including paid advertising, for cherries. Subsequent amendments to the Act made the following additional commodities eligible for this authority: almonds, California-grown peaches, papayas, carrots, citrus fruits, onions, corn, limes, olives, pecans, avocados, apples, raisins and tomatoes. The paid advertising authority for olives was added in 1965 by Public Law 89–330. The walnut industry has not previously had this type of authority.

Authority providing for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for market promotion, including paid advertising, presently exists for three commodities—almonds, Florida Indian River grapefruit, and raisins. Authority for almonds was added to the Act in 1970; Florida Indian River grapefruit in 1973; and raisins in 1978. The almond industry, however, is the only one to institute this type of authority thus far in its Federal marketing order. No previous authority of this type has existed for the walnut and olive industries.

OLIVES

Virtually all olive production in the United States is located in California. Although crop sizes have ranged widely, there has been an overall upward trend—1978 production at 126,000 tons, exceeded the previous record of 1976 by 46,000 tons or 58 percent.

The larger crops are the result of both good yields and increased bearing acreage from heavy plantings that began in the early 1970's and continued until last year. There were an estimated 37,400 bearing acres in 1979 compared to around 28,000 in the early 1970's.

This increased production has created serious problems for producers due to the relatively unique characteristics of olive production. Olive trees require between eight and ten years to reach bearing stage and some twenty years to reach maximum yield. Thereafter, if properly cared for, the trees have a productive life of 100 years or more. Attempts to pick only a percentage of the crop are impractical because fruit which is left on the trees will adversely affect the following year's crop. These factors make it very difficult for producers to make short term production adjustments.

Canning accounts for 75–80 percent of the annual production of California olives. A variety of products and styles are packed, including canned ripe, green ripe, pitted and unpitted, broken, halved, quartered, sliced, chopped, and segmented.

Ripe olives, which were only developed in California in the early 1900s and which have had sales growth from 130,000 cases in 1920 to 10,400,000 cases in 1979, are really a new and immature product category in terms of product longevity. As the case sales figures indicate, olives have shown tremendous growth and acceptance because of their appeal in color, texture and taste. However, the facts are that consumption per household today, in 1980, is only 1.8 cans per year.

All research studies indicate and point to the fact that the industry has an enormous untapped market yet to be developed in the coming decade. For the olive industry to realize the potential of the market and thus eliminate over-supply and depressed market conditions, it must educate the consumer in how to use ripe olives. The best and practically only means of mass education of the consumer is through advertising.

H.R. 3765 will greatly assist the olive industry by (1) providing incentives for handlers to advertise their product, (2) encouraging coordination between generic and private label advertising, and (3) creating a more stable marketing situation that is geared toward expansion. In addition, the bill will benefit consumers by assuring stable supplies and orderly marketing.

WALNUTS

The United States is the world's leading walnut producer, and California is the nation's leading producing State, accounting for over 97 percent of domestic commercial production. Thirty-five years ago the United States supplied 50 percent of the world walnut supply. Today the United States market share has reached 72 percent and projections for the 1980's indicate that domestic production will exceed 80 percent of the world supply. The California walnut industry, consisting of approximately 6,000 growers and 32 handlers, accounts for 97 percent of United States production with a farm value of the crop approximating $170 million. Walnut bearing acreage increased from 139,000 acres in 1968 to 180,000 acres in 1979.

Orderly marketing has made it possible for growers to increase the supply available to the domestic market faster than the increase in United States population and also produce an exportable quantity that is currently providing over $60 million in annual export revenue. The California walnut industry currently exports over 83 million pounds of in-shell walnuts and seven or eight million pounds of shelled walnuts. Domestic consumption of shelled walnuts is over 80 million pounds annually.

The California walnut industry soon may be faced with record high crops far in excess of current domestic and export needs. Based on the current bearing acreage figures, and barring bad weather, California's 1979 crop could be a record in excess of 200,000 tons. Furthermore, in the years ahead, crops over 260,000 tons are possible due to the fact that 20 percent of the walnut acreage in California is currently nonbearing.

Enactment of H.R. 3765 could alleviate the projected supply-demand embalance by encouraging increased promotional activities. The bill would authorize the marketing order to provide for the expenditure of assessment funds obtained from handlers for promotional activity such as generic advertising, public relations and the preparation and distribution of educational and recipe materials. The bill would also permit the marketing order to allow handlers to offset all or part of their direct marketing promotion expenditures against their assessments thereby encouraging handlers to maintain or develop their own marketing promotion activities.

Committee Consideration

SUBCOMMITTEE HEARING AND MARKUP

The Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, on July 30, 1980, held a hearing and markup on H.R. 3765, authorizing amendments to the marketing order for walnuts, and H.R. 4710, authorizing amendments to the marketing order for olives.

HEARING

H.R. 3765—Walnuts

Testimony in support of H.R. 3765 was received from Congressman Coelho, sponsor of the legislation; the Administrator of the Agricultural Marketing Service, U.S. Department of Agriculture; and the Walnut Marketing Board. A written statement was received from the California Farm Bureau Federation.

Congressman Coelho endorsed H.R. 3765 as a measure which would encourage expansion of existing markets and development of new markets for the walnut industry thereby relieving possible oversupply problems. He stated that such promotion would assure stable supplies and orderly marketing benefiting producers and consumers alike.

The administration witness pointed out that authority for advertising under Federal marketing order programs, is authorized for 21 fruit, vegetable and tree nut commodities, and that many States have authorized the establishment of commissions and State marketing orders to promote commodities. The administration witness stated that

H.R. 3765 would provide the walnut industry with the means of financing marketing promotion programs thereby enabling the industry to maintain or advance its position in domestic and export markets.

The administration gave an assessment of the walnut industry and concluded that unless steps are taken to expand existing markets and develop new ones (particularly export markets), the industry will confront a serious oversupply problem.

The administration endorsed H.R. 3765 stating that the bill would enable the industry to expand domestic and export markets by authorizing the addition of promotion and advertising to the current marketing order. The Administration witness stated that addition of this authority to the marketing order would be based on evidence presented at a public hearing, and following the normal rulemaking procedure. Additionally the witness emphasized that any marketing promotion program would be subject to the approval and scrutiny of the Secretary to safeguard against improper use of funds and protect the public interest.

The Director of the Walnut Marketing Board endorsed passage of H.R. 3765 reiterating the concerns expressed by the administration regarding current projections of oversupply and the need to expand markets. The witness emphasized the willingness of walnut producers to assess themselves for new marketing research and promotional programs aimed at developing needed new markets.

The California Farm Bureau Federation statement supported passage of the bill, citing the experience of the almond industry as an example of the results that can be obtained from a high quality market promotion program. The Farm Bureau explained that the almond industry was able to expand production from 140 million pounds in 1971 to 376 million pounds in 1979 and market that increased production without major problems due, at least in part, to a 1970 amendment to the Federal marketing order to provide for paid advertising.

H.R. 4710—Olives

The subcommittee received testimony in support of H.R. 4710 from Congressman Coelho, sponsor of the legislation and the Administrator of the Agricultural Marketing Service, U.S. Department of Agriculture. Written statements were received from the Olive Administrative Committee and California Olive Association and the California Farm Bureau Federation.

Congressman Coelho stated that passage of H.R. 4710 would assist olive producers and handlers deal with projected increases in production by encouraging handlers to maintain and initiate their own marketing promotion activities. He stated these activities would benefit all segments of the olive industry and also consumers.

The administration witness testified in support of H.R. 4710. The witness stated that olive production, virtually all of which is in California, has been increasing, illustrated by the fact that the 1978 crop of 126,000 tons was 58 percent larger than the previous record crop of 80,000 tons in 1976. The administration witness explained that larger crops have resulted from both increased bearing acreage and increased yields. Heavy plantings occurred in the early 1970's and continued until last year as a result of which current acreage is over 37,000 bearing acres compared with 28,000 in the early 1970's.

The administration witness stated that in the current year planned expenditures of marketing and promotion under the Federal marketing order is approximately $1 million, of which paid advertising accounts for $716,000. These expenditures are for generic advertising controlled by a committee of olive handlers and growers, the funds for which are generated by assessments levied on olive handlers. The witness stated that passage of the bill could permit the marketing order to allow handlers to offset at least part of their direct marketing promotion expenditures thereby encouraging them to maintain existing or develop new marketing promotion activities.

The statement received from the Olive Administration Committee and California Olive Association supported enactment of the bill. The statement stressed that the California olive industry is facing a critical imbalance in the supply/demand ratio, with a considerable oversupply condition projected in the near future, due in part to the unique nature of olive production which requires large capital investments and prohibits growers from adjusting production on a year by year basis. The industry statement stressed the great potential benefits to the industry which could be achieved through increased promotion, especially paid advertising, and supported the bill as an effective way of increasing such promotional activities.

A statement received from the California Farm Bureau endorsed the legislation. The testimony stated that passage of the bill, which would allow handlers to receive credits against their assessments for brand advertising would (1) provide incentives to handlers for advertising their product, (2) encourage coordination between generic and private label advertising, and (3) create a more stable marketing situation geared toward expansion.

MARKUP

Following the hearing the subcommittee, on motion of Mr. Richmond, chairman of the subcommittee, considered H.R. 3765 and H.R. 4710. On motion of Mr. Panetta the subcommittee approved technical amendments to both measures. Then, on motion of Mr. Panetta, the subcommittee, by record votes of 6 yeas—0 nays—1 present, and in the presence of a quorum, reported H.R. 3765, as amended, and H.R. 4710, as amended, to the full Committee with the recommendation that they do pass.

FULL COMMITTEE MARKUP

The Committee on Agriculture met on August 26, 1980, to consider pending legislation. Mr. Richmond, chairman of the subcommittee, moved the consideration of H.R. 3765, amending the Agricultural Marketing Agreement Act of 1937 with respect to walnuts, and H.R. 4710, amending the Agricultural Marketing Agreement Act of 1937 with respect to olives.

On motion of Mr. Richmond the committee unanimously agreed to join both measures by amending H.R. 3765 to include the text of H.R. 4710.

Mr. Coelho, sponsor of both measures, spoke in favor of H.R. 3765, as amended, stating that the bill will assist producers of walnuts and olives in meeting current oversupply problems by managing their own promotional programs.

Mr. Findley, inquiring as to the cost of the bill, was advised that, while the bulk of the costs of Federal marketing orders are borne by assessments on handlers of the commodities, passage of the legislation would incur costs associated with the conduct of each referendum of approximately $10,000 per referendum. Total Federal funds expended for the administration of Federal fruit, vegetable and specialty crop marketing orders were $1,865,000 in fiscal year 1979 which approximates $40,500 for each of the 46 marketing order programs. Federal funding provides for routine administrative expenses as well as additional expenses associated with conducting referendums.

On motion of Mr. Richmond the Committee, in the presence of a quorum and by a record vote of 24 yeas—0 nays—1 present, ordered H.R. 3765 reported to the House with the recommendation that it do pass.

Administration Position

The committee received the following letters from Secretary Bergland expressing the Department's support of H.R. 3765, respecting walnuts, and H.R. 4710, respecting olives, which were joined and reported by the Committee as a single measure.

Department of Agriculture,
Office of the Secretary,
Washington, D.C., October 4, 1979.

Hon. Thomas S. Foley,
Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: We appreciate the opportunity to respond to your request of May 1, 1979, for a report on H.R. 3765. The proposed bill would amend the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, to authorize the addition of marketing promotion, including paid advertising, to the Federal marketing order for California walnuts and crediting the assessment obligation of each handler with all or any portion of his direct marketing promotion expenditures as may be authorized by the order.

This Department recommends that H.R. 3765 be passed. The proposed bill supersedes H.R. 3240 on which a report was requested March 30, 1979. It is the same as H.R. 3240, except for the provision allowing handlers to offset at least part of their direct walnut promotion expenditures against their assessments under the marketing order. A technical amendment should be made on page 2, lines 1–2, to change "Agricultural Adjustment Act of 1937" to read "Agricultural Marketing Agreement Act of 1937."

Authority for advertising, under the Federal marketing order programs, is authorized for 21 fruit, vegetable, and tree nut commodities. In addition, several commodities like potatoes have separate Research and Promotion Acts, and many States have authorized the establishment of commissions and State marketing orders to promote commodities. Agricultural producers generally favor marketing promotion (including paid advertising) as a way of maintaining or expanding markets.

The United States is the world's leading walnut producer, and California is the nation's leading producing State, accounting for over 97 percent of the domestic commercial production.

The California walnut industry soon may be faced with record high crops far in excess of current domestic and export needs. Based on the current bearing acreage figures, and barring bad weather, California's 1979 crop could be a record in excess of 200,000 tons. Furthermore, in the years ahead, crops over 260,000 tons are possible due to the large amount of non-bearing acreage. The likelihood of excessive supplies is complicated further by: (1) the possibility of increased trade barriers; and (2) increased competition from other domestic tree nuts such as pecans, almonds, and filberts. Obviously, there is a need to maintain and expand markets, and H.R. 3765 would give the industry a new tool to use for these purposes.

An amendment to the Federal marketing order adding the authority in H.R. 3765 could authorize the expenditure of assessment funds obtained from handlers for walnut promotion such as generic advertising, public relations, or the preparation and distribution of educational and recipe materials to home economists, schools, and food editors, or the general public through the purchase of space in media. An amendment could also encourage handlers of California walnuts to maintain or develop their own marketing promotion, including paid advertising, by allowing handlers to offset at least part of their direct marketing promotion expenditures against their assessments as may be authorized under the marketing order.

Any programs carried out under the authority in H.R. 3765 would be subject to the scrutiny and approval of the Secretary as a safeguard against improper use of funds, to insure compliance with the statute and to protect the public interest. The additional activity caused this Department by implementation of the proposed bill will be absorbed within existing expenditures for marketing order programs except that the cost of the order amendment could approximate $10,000.

In accordance with the provisions of Public Law 91-190, Section 102(2)(C), this legislation would have no significant impact upon the quality of the environment.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Bob Bergland, *Secretary.*

Department of Agriculture,
Office of the Secretary,
Washington, D.C., June 11, 1980.

Hon. Thomas S. Foley,
Chairman, Committee on Agriculture,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: We appreciate the opportunity to respond to your request for a report on H.R. 4710. The proposed bill would amend the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, to permit the marketing order for California olives to provide for crediting the assessment obligation of each handler with all or any portion of such handler's direct expenditures for marketing promotion, including paid advertising, as may be authorized by the marketing order.

This Department has no objection to enactment of the bill. However, two technical amendments should be made on page 2 of the proposed bill. In lines 1–2, "Agricultural Adjustment Act of 1937" should be changed to "Agricultural Marketing Agreement Act of 1937." Lines 3 and 4 should be deleted because the word "olives" is already included in § 608c(6)(1) in the first provision between the words "limes" and "pecans." Therefore it is not necessary to insert such word before "or tomatoes."

Advertising is authorized, under Federal marketing order programs, for 21 fruits, vegetables, and tree nut commodities. In addition, several commodities such as potatoes, wheat, cotton, eggs, and beef have separate research and promotion acts. Many States have authorized the establishment of commissions and State marketing orders to promote commodities. Agricultural producers generally favor marketing promotion (including paid advertising) as a way of maintaining or expanding markets.

The Federal marketing order regulating olives grown in California currently includes the authority for expenditure of assessment funds obtained from handlers for olive promotion. Such promotional activity includes generic advertising, public relations, and the preparation and distribution of educational and receipe materials to home economists, schools, food editors, or the general public through the purchase of space in media. H.R. 4710 is designed to encourage handlers of olives to maintain or develop their own marketing promotion, including paid advertising. It allows them to offset at least part of their direct marketing promotion expenditures against their assessments, as may be authorized under the marketing order.

Virtually all olive production in the United States is located in California. Although crop sizes have ranged widely, there has been an overall upward trend—1978 production at 126,000 tons, exceeded the previous record of 1976 by 46,000 tons or 58 percent.

The larger crops are the result of both good yields and increased bearing acreage from heavy plantings that began in the early 1970's and continued until last year. There were an estimated 37,400 bearing acres in 1979 compared to around 28,000 in the early 1970's.

Canning accounts for 75–80 percent of the annual production of California olives. A variety of products and styles are packed, including canned ripe, green ripe, pitted and unpitted, broken, halved, quartered, sliced, chopped, and segmented.

To safeguard against improper use of funds, insure compliance with the statute, and protect the public interest, any programs carried out under the authority in H.R. 4710 would be subject to the scrutiny and approval of the Secretary. The additional activity caused this Department by implementation of the proposed bill would be absorbed within existing expenditures for marketing order programs, except that the cost of the formal rulemaking proceeding necessary to amend the olive marketing order could approximate $10,000.

In accordance with the provisions of Public Law 91-190, Section 102(2)(c), this legislation would have no significant impact upon the quality of the environment.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Bob Bergland, *Secretary.*

Current and Five Subsequent Fiscal Year Cost Estimate

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee submits the following cost estimate.

The Committee concurs with the cost estimate submitted by the Congressional Budget Office and printed later in this report that the cost of promulgating regulations for the commodities covered by H.R. 3765, as amended, would be approximately $20,000.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 3765, as amended, will have no inflationary impact on the national economy.

Budget Act Compliance (Section 308 and Section 403)

The provisions of clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures) are not considered applicable. The estimate and comparison prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 3, 1980.

Hon. Thomas S. Foley,
Chairman, Committee on Agriculture, U.S. House of Representatives,
1301 Longworth House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 3765, a bill to provide that orders issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act respecting development projects designed to assist, improve, or promote the marketing, distribution, and consumption or production of walnuts may provide for any form of marketing promotion, including paid advertising, and that orders respecting walnuts and olives may provide for crediting certain direct expenditures of handlers for promotion of such commodities, as ordered reported by the House Committee on Agriculture August 26, 1980.

This bill authorizes walnuts and olives to be included in the commodity marketing programs that provide promotion, grading, inspection, and other services. The Department of Agriculture estimates that the cost of promulgating regulations for these commodities will be about $20,000. However, no additional appropriations will be required for this purpose, and thus no budget impact is expected.

Sincerely,

ALICE M. RIVLIN, *Director.*

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 3765, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of Rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

* * * * * * *

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

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ORDERS

SEC. 8c. * * *

TERMS—OTHER COMMODITIES

(6) In the case of the agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)), no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or products, of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or products, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof during any specified period or periods, under a uniform rule based upon the amounts sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing or providing for the establishment of reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

(F) Requiring or providing for the requirement of inspection of any such commodity or product produced during specified periods and marketed by handlers.

(G) In the case of hops and their products, in addition to, or in lieu of, the foregoing terms and conditions, orders may contain one or more of the following:

(i) Limiting, or providing methods for the limitation of, the total quantity thereof, or of any grade, type, or variety thereof, produced during any specified period or periods, which all handlers may handle in the current of or so as directly to burden, obstruct, or affect interstate or foreign commerce in hops or any product thereof.

(ii) Apportioning, or providing methods for apportioning, the total quantity of hops of the production of the then current calendar year permitted to be handled equitably among all producers in the production area to which the order applies upon the basis of one or more or a combination of the following: The total quantity of hops available or estimated will become available for market by each producer from his production during such periods; the normal production of the acreage of hops operated by each producer during such period upon the basis of the number of acres of hops in production, and the average yield of that acreage during such period as the Secretary determines to be representative, with adjustments determined by the Secretary to be proper for age of plantings or abnormal conditions affecting yield; such normal production or historical record of any acreage for which data as to yield of hops are not available or which had no yield during such period shall be determined by the Secretary on the basis of the yields of other acreage of hops of similar characteristics as to productivity, subject to adjustment as just provided for.

(iii) Allotting, or providing methods for allotting, the quantity of hops which any handler may handle so that the allotment fixed for that handler shall be limited to the quantity of hops apportioned under preceding section (ii) to each respective producer of hops; such allotment shall constitute an allotment fixed for that handler within the meaning of subsection (5) of section 8a of this title (U.S.C., 1940 edition, title 7, sec. 608a).

(H) Providing a method for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging, transportation, sale, shipment, or handling of any fresh or dried fruits, vegetables, or tree nuts: *Provided, however*, That no action taken hereunder shall conflict with the Standard Containers Act of 1916 (15 U.S.C. 251–256) and the Standard Containers Act of 1928 (15 U.S.C. 257–257i);

(I) Establishing or providing for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order: *Provided*, That with respect to orders applicable to almonds, California-grown peaches, cherries, papayas, carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, avocados, apples, raisins, *walnuts*, or tomatoes such projects may provide for any form of marketing promotion including paid advertising and with respect to almonds, raisins, *walnuts*, *olives*, and Florida Indian River grapefruit may provide for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order: *Provided further*, That the inclusion in a Federal marketing order of provisions for research and marketing promotion, including paid advertising, shall not be deemed to preclude, preempt or supersede any such provisions in any State program covering the same commodity and when the handling of any commodity for canning or freezing is regulated, then any such projects may also deal with the commodity or its products in canned or frozen form.

(J) In the case of pears for canning or freezing, any order for a production area encompassing territory within two or more States or portions thereof shall provide that the grade, size, quality, maturity, and inspection regulation under the order applicable to pears grown within any such State or portion thereof may be recommended to the Secretary by the agency established to administer the order only if a majority of the representatives from that State on such agency concur in the recommendation each year.

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96th Congress, 2d Session | HOUSE OF REPRESENTATIVES | Report No. 96-1277

STATE AND LOCAL FISCAL ASSISTANCE ACT AMENDMENTS OF 1980

September 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Brooks, from the Committee on Government Operations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7112]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 7112) to authorize an extension and amendment of the revenue sharing program to provide general purpose fiscal assistance to local governments, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

Statement of Purpose

H.R. 7112, the State and Local Fiscal Assistance Act Amendments of 1980, extends and amends the State and Local Fiscal Assistance Act of 1972, as amended, and adds a new title IV to the Act authorizing a program of special assistance payments to State and local governments during periods of economic recession. The "revenue sharing" program established by the Act provides financial assistance to help support public services that are the responsibility of the States and their general-purpose units of local government. Since this assistance is not restricted to particular services or functions, the act contains provisions intended to assure that citizens are afforded an opportunity to participate in the determination of how these funds are used by their State and local governments, that the funds are expended without discrimination, and that all financial accounts of recipient governments are examined by qualified independent auditors. Like the 1972 and 1976 legislation, H.R. 7112 establishes programs of limited duration so that Congress may reconsider their continuation in the light of further experience and new developments.

COMMITTEE ACTION AND VOTE

H.R. 7112 was approved by the committee with a single amendment in the nature of a substitute containing the amendments adopted by the committee.

H.R. 7112 was reported by the committee by voice vote at a duly-called meeting on July 31, a quorum being present.

EXPLANATION OF AMENDMENT

Inasmuch as all after the enacting clause of H.R. 7112 was stricken and all language incorporated into one amendment, the contents of this report constitutes an explanation of the amendment.

HEARINGS AND INVESTIGATIONS

The Intergovernmental Relations and Human Resources Subcommittee has made a thorough study of the general revenue sharing program and the various formula and related statutory changes proposed by the Administration and other witnesses. The Subcommittee has also studied the need for antirecession fiscal assistance and has carefully developed the innovative countercyclical program contained in this bill.

Hearings were held on H.R. 7112 on March 19, 25, 26, 27, and April 16 and 17, 1980, in which testimony was taken from Members of Congress, the Secretary of the Treasury, the Comptroller General, the Advisory Commission on Intergovernmental Relations, and a number of organizations, including the National Governors' Association, National Conference of State Legislatures, National League of Cities, U.S. Conference of Mayors, National Association of Counties, National Association of Towns and Townships, Municipal Finance Officers Association, Council on Municipal Performance, Center for National Policy Review, National Urban Coalition, League of Women Voters AFL-CIO, American Federation of State, County and Municipal Employees, and the U.S. Chamber of Commerce.

LEGISLATIVE HISTORY OF THE 1972 ACT

The State and Local Fiscal Assistance Act of 1972 was signed into law on October 22, 1972, after a long period of debate. When this type of unconditional Federal aid was first proposed in 1964 by Dr. Walter Heller, then Chairman of the Council of Economic Advisers, it was intended to stimulate the economy by earmarking an anticipated Federal surplus for distribution to the States. Payments were to be made only to State governments. The States, at their discretion, could allocate a portion of the funds to local governments.

It subsequently became evident that in order for such legislation to be politically acceptable, it would have to provide for direct payments to at least the larger local governments. As finally enacted, the Act guaranteed automatic payments, without applications, to all States and to virtually all general purpose local governments.

The Act provided $30.2 billion for the five calendar years 1972 through 1976, with payments commencing at $5.3 billion for 1972 and increasing annually to a level of $6.5 billion in 1976. The first payments, made retroactive for all of 1972, were sent to recipients in December 1972.

The funds are distributed to State and local governments on the basis of formulas that take in account their varying population size and economic circumstances. Two-thirds of the total is distributed to local governments and one-third to the States, because the local units were viewed as having the more pressing financial problems and more limited taxing capabilities.

The Act reflects a compromise between the differing formulas originally adopted by the House and the Senate. It also makes the allocation process more flexible and responsibe to the particular circumstances of individual States by providing a choice between two formulas for allocating funds to each State area (which includes both the State government and its local governments): a 5-factor formula developed by the House, and a 3-factor formula developed by the Senate. The amount for each State area is tentatively computed under both formulas and each area is automatically given an allocation based on whichever of the two formulas yields the higher payment. If either Alaska or Hawaii uses the 3-factor formula, its allocation is increased (in accordance with the Noncontiguous States Adjustment) by the same percentage adjustment as applies to the base pay allowances of Federal Government employees residing in those States. This adjustment is intended to reflect higher living costs in those States.

Under the House-originated formula, the total amount for each State area is based on five factors. Three of these factors are designed to take need into account: population, urbanized population, and population weighted by the relative per capita income of the United States compared to the State per capita income. Each of these factors is given a weight of about 22 percent and together comprise two-thirds of the total. The remaining two factors, general tax effort of the State and its localities, and State individual income tax collections provide some incentive and reward to the States and localities for meeting their fiscal requirements from their own tax sources. Each of these factors is given a weight of about 17 percent and together comprise one-third of the total.

Under the Senate-originated formula, which is used if it produces higher payments than the 5-factor formula, funds are allocated to each State area on the basis of 3 factors that are given equal weight: population, relative income, and general tax effort. The factors in this formula, therefore, are similar to three of the factors in the 5-factor formula. However, the elements in the 3-factor formula are multiplied by each other instead of being given a particular weight. This tends to provide larger distributions to those States which have both low incomes and high tax effort.

Two-thirds of the amount allocated to each State area for each entitlement period is apportioned to the general purpose local governments in that State area (including cities, counties, towns, and townships): the remaining one-third share is apportioned to the State government.

The Act provides for allocation of the local government share within each State in accordance with the following procedures:

1. The amount to be allocated to units of local government is divided by the population of the State to establish the per capita entitlement for all governments within the State.

2. The local government amount is distributed to county areas (these are geographic areas, not governments) based upon the ratio that each county area bears to all county areas within the State, using a 3-factor formula (population × tax effort × relative income).

3. If this calculation allocates to any county area an amount which, on a per capita basis, exceeds 145 percent of the statewide per capita entitlement calculated in step 1, its amount is reduced to the 145 percent level and the resulting surplus amount is shared proportionately by all the remaining unconstrained county areas within the State.

4. Similarly, if any county area is allocated less than 20 percent, on a per capita basis, of the amount calculated in step 1, its allocation is increased to the 20 percent level and the resulting deficit is taken proportionately from all the remaining unconstrained county areas within the State.

5. Each county area allocation is then divided into four parts: First, an amount for Indian tribal governments or Alaskan native villages is determined by the ratio of tribal or village population to the total population of the county area.

Then, from the remainder, a township allocation is determined on the basis of the ratio of all township adjusted taxes (i.e., taxes excluding those for school purposes) to the total adjusted taxes in the county.

Next, a county government share is similarly determined on the basis of county government adjusted taxes.

The remaining proportion is reserved for the other units of local government.

6. The 3-factor formula is then used to allocate funds separately to townships and other local governments. If a unit of government receives more than 145 percent on a per capita basis, it is adjusted to the 145 percent level. If a unit receives less than 20 percent, its allocation is increased to the lower of either the 20 percent level, or 50 percent of its adjusted taxes and intergovernmental transfers. If any unit receives more than 50 percent of its adjusted taxes and transfers, its allocation is reduced to that level and the excess is given to the county government.

7. If the county government has been allocated more than 50 percent of its adjusted taxes and transfers, its allocation is reduced to that level, and the excess is returned to the State government. (This adjustment can result in a State share exceeding one-third of the funds.)

8. If any allocation is less than $200, or any unit of local government waives its entitlement, those funds are allocated to the next higher level of government.

Congress included these maximum and minimum constraints in the intrastate formula in order to prevent local governments from receiving extremely large or small entitlement amounts.

The legislative history indicates that Congress enacted this program with a variety of perceptions of its objectives. For example, some Members viewed the program as purely a fiscal device to ease the tax burden of State and especially local governments by sharing revenue from the progressive and productive Federal income tax; others saw it as a means of decentralizing political power in our federal system. Some believed the program was intended to supplement existing Federal categorical (special purpose) assistance; others viewed it as a partial substitute for existing categorical programs. Some Members thought the program was intended to expand the activities of local and State governments to provide important but unmet public needs; others saw it as a means of reducing or stabilizing local property taxes.

The program established by the 1972 Act is widely identified as "revenue sharing," even though the law does not use that term and appropriates specified amounts from the general fund irrespective of the size of Federal revenues.

1976 FISCAL ASSISTANCE AMENDMENTS

The Act was extended, effective January 1, 1977, for an additional three and three-quarters years to September 30, 1980. The purpose of the three-quarter year segment was to synchronize the program with the Federal Government's new fiscal year, which begins on October 1 each year and terminates on September 30 of the following year. Funding for the program was set at $4.991 billion for the nine-month period ending September 30, 1977, and $6.855 billion for each of the following three fiscal years.

The 1976 amendments utilized a provision contained in the Congressional Budget and Impoundment Control Act of 1974 permitting the enactment of spending authority by way of entitlement. Use of the entitlement procedure guarantees that funds will be provided at the specified amounts for each entitlement period. This provision, which effectively removes the program from the normal appropriations process of the Congress, was adopted on the theory that the assurance of a specified funding level for future years would enable State and local governments to use the revenue sharing money more efficiently.

The 1976 amendments made no change in the revenue sharing allocation formula, except for treating the office of sheriff within the parishes of Louisiana as a unit of local government eligible to receive revenue sharing payments. Provision was made for paying each sheriff's office 15 percent of what would otherwise have been its parish government's allocation, with half this amount deducted from the parish government's entitlement and half from the State share.

In addition, several non-formula changes were made in the Act. The provision restricting the use of local government allocations to certain priority expenditure categories was eliminated, thereby permitting those governments to use revenue sharing funds for any purpose consistent with local and State laws. This provision was eliminated in recognition of the fact that it is impossible in most instances to determine the actual use of the funds since revenue sharing dollars are "fungible", or substitutable, for local dollars. In this same light, the Congress also removed the prohibition on State and local government use of revenue sharing money as matching funds for other Federal grant programs. This action was intended, also, to enhance the "no strings" character of the revenue sharing program.

Because revenue sharing funds are not intended to promote any Federal program purposes, Congress strengthened the Act's prohibitions against discrimination and its requirements for independent financial audits and for providing citizens a formal opportunity to participate in the budget process of their State and local governments.

In addition, the law was amended to prohibit State and local governments from using revenue sharing funds for lobbying activities intended to influence legislation relating to this Act.

1980 COMMITTEE AMENDMENTS

The bill reported by the Committee continues revenue sharing entitlements to local governments for an additional three years at a funding level of approximately $4.6 billion a year. This is the same dollar amount local governments are presently receiving. Changes in the existing law approved by the Committee are described in the following sections.

DISCONTINUANCE OF ALLOCATIONS TO STATE GOVERNMENTS

State governments at present receive one-third of the total funds, or approximately $2.3 billion a year. The Committee voted to discontinue the State share, which is not provided for in the First Budget Resolution for fiscal year 1981, as a means of helping to balance the Federal budget. The Committee believes that State governments are better able to adjust to the discontinuance of revenue sharing allocations than local governments, both because of their superior tax authority and because revenue sharing constitutes only a very small part of State revenues. It is the Committee's view that State governments, in the aggregate, are in better fiscal condition at present than the Federal Government. The Committee is prepared to reexamine the question of future State participation in this program at such time as the condition of the Federal budget makes such reconsideration advisable.

DISCONTINUANCE OF NONCONTIGUOUS STATE ADJUSTMENT

Alaska and Hawaii have been receiving additional funds to compensate for their relatively high costs of providing government services. However, no adjustment is made for interstate cost variations within the continental United States.

Studies have shown a wider difference in the cost of living (and the cost of providing government services) within the continental United States than between other high cost States and Alaska or Hawaii. Since a practical method is not available for measuring these cost differences for the purpose of adjusting revenue sharing allocations, the Committee concluded that the supplemental allocations for Alaska and Hawaii are no longer justified and should be discontinued.

DISCONTINUANCE OF SPECIAL ALLOCATION FOR LOUISIANA SHERIFFS

Provision was made in the 1976 amendments for a revenue sharing allocation to the office of sheriff within the Louisiana parishes. Inasmuch as this office is not a general purpose unit of government, and other limited purpose governments are not eligible to participate in the program, the Committee deleted this provision.

DISCONTINUANCE OF USE REPORTS

The Act now requires each recipient government to report annually on the amounts and purposes for which revenue sharing funds have been appropriated, spent or obligated, and the relationship of these funds to functional items in its budget. As recommended by the administration, the Committee has deleted this requirement because the reports do not provide reliable information on the actual use or impact of revenue sharing funds, which are often substituted for a government's own-source funds.

LIMITATION ON LOCAL TAX EFFORT

The general tax effort factor serves as one of the formula elements for determining a local government's revenue sharing allocation. It is derived by dividing a government's adjusted taxes (excluding school taxes) by the money income of its residents. While this measure is intended to represent the relative tax burden borne by local residents, it has been found that some communities—mainly industrial enclaves and resort communities—are credited with very high tax efforts which overstate the local tax burden and thereby generate unduly large allocations. As recommended by the Administration, the Committee has dealt with this problem by limiting the adjusted tax for any local government to an amount not exceeding its population multiplied by 250 percent of the average per capita adjusted taxes for similarly classified units in its State.

DEFINITION OF A UNIT OF LOCAL GOVERNMENT AND STUDY OF LOCAL GOVERNMENT SERVICES

The present Act defines a "unit of local government" as the government of a county, municipality, township, or other unit below the State which is treated as a unit of general government by the Census Bureau for general statistical purposes. The term also includes the recognized governing body of an Indian tribe or Alaskan native village "which performs substantial governmental functions." The term "township" is meant to include equivalent local units having different designations, such as "towns."

Studies have shown that some single-purpose governmental units have received allocations under the existing definition solely because the Census Bureau does not look beyond a local government's nominal classification. Since the revenue sharing program is intended to aid only general purpose governments, the Committee clarified the existing definition by including several additional specifications. To meet the revised definition, which becomes applicable on October 1, 1980, a unit of local government must impose taxes or receive intergovernmental transfer payments for the substantial performance of at least two services from among the commonly provided municipal-type services listed in the bill. In addition, a local unit must spend at least 10 percent of its total expenditures (exclusive of expenditures for general and financial administration and for the assessment of property) in the most recent fiscal year for each of two such services. However, this additional requirement is not applicable to a local unit which performs four or more such services.

The Committee expects the Secretary of the Treasury to obtain the information necessary to administer this provision without unduly burdening local governments. If feasible, the Secretary should obtain the information through the survey now used to collect data on the adjusted taxes of local governments.

In order to obtain better information on the services actually performed by the differing types of general purpose local governments which exist in the States and territories, the committee directs the Secretary, in cooperation with appropriate representatives of the general purpose governments, to conduct a study of the variety, number, and extent of services provided by local governments for their citizens. The Secretary is required to report the results of this study to the President and the Congress no later than one year after enactment of this legislation.

AUDITING AND ACCOUNTING

The 1976 amendments established more rigorous audit requirements for approximately 11,000 State and local governments. Each governmental unit receiving an annual allocation of $25,000 or more was required to obtain an independent audit of all its financial statements, in accordance with generally accepted auditing standards, not less often than once every three years. This provision was interpreted by Treasury Department regulations to mean an audit of only one of the three years beginning in 1977, rather than an audit covering all three years.

The Administration has recommended, with the support of the Comptroller General, that the required audit be conducted not less often than once every two years and include all financial statements for both years. This recommendation was accepted by the Committee. The Committee expects the Secretary to issue regulations providing for a smooth transition to the new two year audit cycle so that no gap in audit coverage will occur.

The General Accounting Office reports that the 1976 audit requirements and the Office of Revenue Sharing's quality control efforts have had a beneficial effect on the quality of State and local government audits. The Committee understands that by May 1980, 15 of the 20 State audit agencies that were found to have auditing problems had corrected their deficiencies. However, before bringing their practices into conformance with generally accepted auditing standards, some of these State agencies had already completed audits of both State agencies and local governments.

To deal with this situation, the Committee has provided the Secretary authority to waive the necessity of repeating the audit, in whole or in part, of those State agencies and local governments which were audited by a substandard State agency which (1) subsequently took corrective action to comply fully with the requirement that audits be conducted in accordance with generally accepted auditing standards or (2) demonstrates acceptable progress toward meeting those standards.

This waiver authority is intended to apply only to those financial accounts which have been audited pursuant to the 1976 amendments. Where a unit of government has not received a complete audit, only those financial accounts actually audited would be subject to the waiver. In those cases where governmental units have not been audited prior to October 1, 1980, the Committee expects the Secretary to take all reasonable steps to ensure that the required audits are completed expeditiously as a condition of further revenue sharing payments.

The Committee is aware of the special situation in Michigan where the State agency responsible for auditing county governments has not performed acceptable audits and cannot meet the conditions of the waiver because it will no longer perform these audits. It is the Committee's understanding that in lieu of auditing the counties itself, the State agency will contribute to the cost of independent private audits of the county governments. It is intended that those audits will also qualify for the aforementioned waiver if the independent private audit is conducted in accordance with generally accepted auditing standards.

The Act currently provides that audits required by other Federal laws shall be accepted as satisfying the revenue sharing audit requirements if such audits substantially comply with the requirements of the Act. The Committee has strengthened this provision by explicitly requiring coordination, when practicable, with the Office of Management and Budget's directives for auditing State and local governments under what is generally referred to as the single audit concept. The Committee believes this approach will help prevent unnecessary duplication of auditing effort.

The single audit concept requirement, found in OMB Circular A-102, attachment P, evolved from reviews conducted by the Government Operations Committee as well as studies made by the General Accounting Office, the Joint Financial Management Improvement Program, and others. These studies concluded that Federal grant auditing was a maze of inconsistency, gaps and duplication.

For example, a recent General Accounting Office study of 73 grant recipients showed that 80 percent of $3.7 billion in Federal funds received over a 4-year period had not been audited. Other recipients, however, had been audited repeatedly by one or more agencies, thereby resulting in wasteful audit effort. The GAO recommended implementation of the single audit concept to remedy this problem. Under this approach, financial and compliance audits would be conducted on a grant recipient basis rather than on a grant-by-grant basis, with one audit covering all of the recipient's grants. Such an audit, among other things, would test the grantee's internal controls system, fund balances, and compliance with Federal restrictions on fund usage. A Federal agency could require additional audits if it determined that the single audit was poorly performed or did not adequately meet the agency's needs. However, the agency could not duplicate acceptable audit work previously performed.

The Committee is aware of the need for improving State and local accounting standards. This problem was brought dramatically to public attention in recent years by the financial crisis experienced by New York City, Yonkers, Cleveland and some other large local governments.

The Committee has been informed of the progress being made for the establishment of a voluntary government Accounting Standards Board, as well as a non-profit foundation to support it from both private sector and State and local government contributions. The proposed board would develop financial accounting and reporting standards for State and local governments in much the same way as the Financial Accounting Standards Board develops standards for private sector organizations. The Committee applauds this cooperative effort to establish a voluntary standard-setting body which has the potential for improving the financial information used by State and local officials, taxpayers, investors, and creditors, as well as the Federal Government, in reviewing the operating of our State and local governments.

RESERVES FOR ADJUSTMENTS

The 1972 Act set up a national reserve fund for the purpose of enabling the Secretary to adjust for over and underpayment of the quarterly allocations to recipient governments. The 1976 amendments provided for a separate reserve fund for each State area and authorized the Secretary to reserve up to 0.5 percent of a State area's entitlements for such adjustments. However, the funds accumulated in the national reserve were retained to make adjustments for amounts in dispute in the 1972-76 payment periods.

The Committee has learned that the Department's practice of uniformly reserving 0.5 percent of entitlement for each State area in most payment periods has resulted in the buildup of excessive reserves for some States. To avoid the unnecessary buildup of these reserves, the Committee requests the Secretary to vary the amount of future adjustments in accordance with the projected need in each State. The Committee expects the national reserve to be discontinued as soon as disputed payments for the 1972-76 periods are resolved.

REVENUE SHARING STUDIES

The Subcommittee concluded in the course of marking up the bill that the data used in the formula for allocating revenue sharing funds might be made more complete and accurate. For example, the formula presently uses 1975 personal money income, derived from a 20 percent sample of households in the 1970 decennial census and updated by statistical procedures, to measure fiscal capacity. (Per capita income, along with population, also serves as a measure of the need for public services.) More current data, also obtained by a statistical sample, will be available in a few years from the 1980 census. In addition, data will be available from the

Census on the poverty population in each community which might serve as another measure of need.

Personal income, however, is an incomplete gauge of capacity since most communities have revenue sources that are unrelated to the income of its residents. Most notably, the current measure omits taxable corporate income and, therefore, understates the fiscal capacity of jurisdictions which tax corporate income.

To help adjust for this understatement of fiscal capacity for local governments that collect a substantial proportion of their taxes from corporations, consideration could be given to assigning greater weight to the taxes obtained from residential property. For example, taxes from residential property could be counted one and one-half times as much as non-residential property. While data on residential and non-residential tax collections are not presently available for local governments, this information can be obtained by the Census Bureau through its normal collection procedures.

Accordingly, the Committee requests the Census Bureau to collect the appropriate data on residential and non-residential property tax revenues of local governments for consideration in connection with the next reauthorization of the revenue sharing program.

The present formula applies a tax effort factor, at both the interstate and intrastate levels, to measure how heavily a government taxes relative to its capacity to tax. Taxes, however, are a limited an uneven measure of relative fiscal effort (or burden) because they omit non-tax revenue sources, principally service or user charges. User charges, it should be noted, are becoming an increasingly important source of revenue for many local governments as the result of tighter restrictions placed on property taxation in the wake of California's Proposition 13. Also, taxes do not necessarily represent a jurisdiction's actual tax burden since they overstate the fiscal effort of a government which obtains a portion of its tax collections from non-residents or from corporate sources.

In view of these data weaknesses, the Secretary, in cooperation with the General Accounting Office and the Advisory Commission on Intergovernmental Relations, should make a study of practicable methods for improving the measurement of both fiscal capacity and revenue-raising effort for use in the allocation formula. To be useful to the Committee, this study should be submitted to Congress by January 1, 1982.

ESTABLISHMENT OF A COUNTERCYCLICAL ASSISTANCE PROGRAM

H.R. 7112 adds a new title authorizing a program of special assistance payments to State and local governments during periods of economic recession. The purpose of this title is to help preserve vital public services during times of economic hardship and to reduce the pressure on State and local governments to increase taxes.

CONCEPT OF COUNTERCYCLICAL ASSISTANCE

The theory that State and local governments respond to a recession by taking budgeting actions that intensify the downswing of the economic cycle (and thereby undercut efforts by the Federal

Government to stabilize the national economy) originated in the depression experience of the 1930's.

This theory was subsequently questioned by some economists who found State and local fiscal behavior increasingly countercyclical. More recently, a study by the Advisory Commission on Intergovernmental Relations has confirmed that the State-local sector has taken appropriate countercyclical actions (i.e., has added to aggregate demand) in every recession since World War II.

The Committee believes that State governments, in particular, are capable of building up surplus funds when the economy is prosperous to help offset the shortfall of revenues that normally occurs in a recession. The Committee, therefore, urges each State government which has not already adopted this practice, and also local governments where feasible, to take early action to establish such stabilization or "rainy day" funds to supplement the antirecession assistance provided by this legislation.

SENSITIVITY OF STATE AND LOCAL GOVERNMENTS TO ECONOMIC CYCLES

It is generally agreed that income and sales taxes are much more sensitive to economic cycles than property taxes. When a recession occurs, property tax collections remain relatively stable unless the severity of the recession in a particular community leades to an unusually high tax delinquency rate. It is significant, therefore, that the property tax is predominately a local revenue source, while income and sales taxes collected mainly at the State level. It is also significant that property taxes provide less revenue growth during periods of high inflation than income and sales taxes.

In 1976-77, State governments obtained 86 percent of their tax revenues from income and sales taxes; local governments obtained only 16 percent of their tax receipts from these sources. Local governments, on the other hand, derived 81 percent of their tax revenues from levies on property.

State governments are also responsible, to a much larger extent than local governments, for increased recession-related expenditures. Thirty-nine States, for example, pay all of the non-Federal share of AFDC welfare payments and medicaid costs. Where local governments are required to share these costs, counties usually bear this burden. New York is the outstanding exception among the cities, since it is required to pay 25 percent of very sizable AFDC and medicaid costs, as well as one-half of general assistance expenditures. San Francisco, which was the other major city responsible for financing these services, was relieved of this expense by the State after Califonia adopted the Proposition 13 restrictions on local property taxation.

There is, however, a wide diversity of tax practices at each level of government and also among States. In 1978, for example, sales and gross receipts taxes provided 86 percent of South Dakota's tax revenue, and more than 70 percent for seven other States (Connecticut, Florida, Mississippi, Nevada, Tennessee, Washington, and West Virginia). Alaska, which does not levy a general sales tax, obtained only 12 percent from this source. The individual (personal) income tax accounted for 59 percent of Oregon's tax collections, and more than 40 percent of tax revenues for Delaware, Massachusetts, New York, and Wisconsin. On the other hand, the personal income tax is not used by six States (Florida, Nevada, South Dakota, Texas, Washington, and Wyoming), and it produces relatively little revenue in three other States (Connecticut, New Hampshire, and Tennessee). Several States, including Alaska, Louisiana, New Mexico, Oklahoma, and Texas, derive relatively large revenues from severance and other taxes on natural resources.

In fourteen States[1] 40 percent or more of combined State and local tax revenue came from property taxes. Ordinarily, governments relying on property taxes would be less affected by economic cycles than those heavily dependent on income and sales taxes.

While the property tax is the principal tax source for local governments, counties are more dependent on it (81 percent of tax collections) than cities (60 percent). However, the largest cities and counties tend to have more diversified tax sources. Consequently, their budgets may be more sensitive to recessionary forces.

The six largest cities, as a group, obtained 51 percent of their taxes from property; the comparable percentage for the 328 cities between 50,000 and 200,000 population was 72 percent.

It is useful to examine in more detail the revenue sources of the larger cities and counties which we would expect to have the most diversified taxes.

As shown in the table below, property taxes provided 62.3 percent of locally-raised general revenues in the 62 largest counties, compared with 40 percent for the nation's 46 largest cities. The cities, on the other hand, obtained 14.2 percent of their general revenues from income taxes, while this source provided only 2.4 percent for the counties.

DISTRIBUTION OF GENERAL REVENUES FROM OWN SOURCES OF 46 LARGEST CITIES[1] AND 62 LARGEST COUNTIES,[2] 1976–77

Revenue Source	Percent	
	Cities	Counties
Taxes:	75.4	76.5
Property	40.0	62.3
Sales and gross receipts	17.2	9.4
Income	14.2	2.4
Licenses and other	4.1	2.4
Charges, assessments and miscellaneous	24.6	23.5
Total	100.0	100.0

[1] Cities with 300,000 population or more. Eight of these 46 municipalities operate public schools, and 13 are, in effect, composite city-county governments.

[2] Counties with 500,000 population or more.

Source: U.S. Bureau of the Census, "City Government Finances in 1976–77," table 8, and "County Government Finances in 1976–77," table 6.

Four cities accounted for over 84 percent of all income tax collections in the 46 largest cities: New York, 52.8 percent; Philadelphia, 16.6 percent; District of Columbia, 10.1 percent; and Detroit, 4.9 percent.

The variability of revenue sources used by these four large cities is indicated below.

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[1] Alaska (includes taxes on natural resources), California (pre-Proposition, 13), Connecticut, Kansas, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, Oregon, Rhode Island, South Dakota, Vermont, and Wyoming.

REVENUE SOURCES OF FOUR CITIES USING AN INCOME TAX

City	Percent of tax revenue from income tax	Percent of total general revenues from			
		Own sources	Taxes	State government	Federal Government
New York	22.2	52.6	42.1	47.4	6.6
Philadelphia	34.6	67.4	53.9	11.7	20.3
District of Columbia	34.7	53.30	4	....	44.9
Detroit	37.7	50.8	36.7	23.6	23.7

Source: U.S. Bureau of the Census, "City Government Finances in 1976–77," table 3.

As shown in the table, New York obtains a substantially lower proportion of its total tax revenues from the income tax, despite the fact that it accounts for 52.8 percent of all taxes collected from this source in the four cities. Another prominent difference is the small share (6.6 percent) of New York's general revenues provided by the Federal Government, compared with more than 20 percent in each of the other cities. A further disparity is the much greater reliance of Philadelphia on general revenues that are raised locally, particularly taxes. Conversely, Philadelphia receives a much lower percentage of its general revenues from State government (11.7 percent) than New York (47.7 percent) or Detroit (23.6 percent).

The extent to which cities receive general revenues from their State governments varies enormously throughout the Nation. Among the 46 largest cities, the percentage of this State assistance ranges from over 48 percent in Baltimore to only 2 percent in Dallas and Houston. Similarly, the assignment of responsibility for providing services varies widely between State governments and their cities and counties.

The 46 largest cities as a group also obtained a much larger percentage of their revenue from sales taxes—17.2 percent for the cities compared with 9.4 percent for the counties. Service charges and other general revenues were approximately the same for both groups.

Since cities raise substantially more of their general revenues through sales and income taxes than counties, particularly the larger governmental units, their tax collections are likely to be more affected by recession—as well as by economic growth and inflation—than counties.

While the characteristics of a government's tax system will influence how a recession affects its revenues, other factors are also important. These include the amount and type of industrial and commercial base, the division of service responsibilities between a State and its local governments, and the extent to which a higher level of government pays for or directly administers services in the community.

This point is well illustrated by the division of tax revenues between a State and its local governments. While the overall State government percentage of total State-local tax revenue has increased from 48.9 to 57.5 percent since 1959, this relationship varies widely among the States. The State government of New Hampshire raised only 38.1 percent of total State-local tax revenues in 1977, while Alaska's State government collected more than double that proportion—82.8 percent. Delaware and New Mexico also collected at lease 80 percent of all State and local taxes at the State level.

The tremendous variability among the States in how public services are delivered and financed makes the task of devising Federal formulas to provide fiscal assistance to local governments extremely difficult. This is particularly the case because we do not have adequate data for comparing the fiscal needs and tax burdens of local communities. However, some data sources are much better than others for this purpose.

MEASURING THE IMPACT OF A RECESSION

Since a recession is identified principally by a decline in gross national product (GNP) expressed in "real" or constant dollars (i.e., adjusted for inflation), its impact on State and local revenues will be determined by changes in the major components of GNP and the extent to which individual governments tax those income sources.

In terms of the type of taxes customarily used by State and local governments, we would expect the impact of a recession on those governments to be felt mainly through reduced personal income. Wages and salaries constitute nearly two-thirds of total personal income; transfer payments (13 percent) and interest income (10 percent) are the other main components. Consequently, it is appropriate to incorporate some comprehensive measure of personal income change, particularly of changes in wages and salaries, in an antirecessionary assistance formula.

WAGE AND SALARY DATA AS A RECESSION INDICATOR

Since wage and salary data represent the income from employment, this statistical measure should respond to economic cycles in a similar manner. The wage and salary data, however, are likely to be a more comprehensive and sensitive indicator of recession than employment because they take account of part-time employment and changes in the number of hours worked.

The Commerce Department's Bureau of Economic Analysis (BEA) produces quarterly estimates of wage and salary disbursements, principally from tax reports filed by employing establishments subject to State unemployment insurance laws. These reports cover about 95 percent of private non-agricultural employment. In addition, wage and salary data for Federal, State and local government employees, farm workers, and some other groups are included in the estimates.

Because the data from these reports are not available in Washington until six months after the end of the month to which they refer, a second report program operated by the Bureau of Labor Statistics (based on a sample of firms covering approximately 32 million jobs) is used to provide preliminary estimates of monthly employment within two months after the end of the month to which the data apply. On this basis, the BEA's State estimates would be available for use in a fiscal assistance formula four months after the close of each quarter. BEA believes this time could be shortened to approximately 90 days if this activity were given sufficient priority.

Wage and salary data are also collected for all counties within each State. At the present time, this information is available only with a lag of seven to eight months after the close of each calendar quarter.

For triggering an assistance program at the national level, quarterly wage and salary data are presently available to BEA 45 days after the end of the quarter, if the last month of the quarter is estimated, and 75 days following the calendar quarter for final figures.

BEA officials state that the final quarterly estimates of private non-farm wages and salaries are generally considered to be of high quality. Since the data are derived from a complete count of employees covered by the various State unemployment insurance tax laws, they are not subject to sampling variability.

DESCRIPTION OF COMMITTEE ALLOCATION FORMULA

The bill adds a new title IV to the State and Local Fiscal Assistance Act of 1972, as amended. The new title authorizes $1 billion in each of the fiscal years 1981, 1982 and 1983 for a countercyclical assistnce program that would make payments to State and local governments during a recession in proportion to the impact of the recession.

Under the title IV formula, funding would be triggered when the national economy has experienced two consecutive quarterly declines in both real gross national product and real wages and salaries (that is, corrected for inflation). Once a recession has been confirmed by these declines, funds would be provided for each recession quarter in relation to the severity of the recession. The program would be funded at a rate of $10 million for each one-tenth percentage point decline in real wages and salaries measured from the pre-recession base—the average of the real wages and salaries for the two quarters preceding the decline. The amount of money allocated in any one quarter would be limited to $300 million.

After reserving one percent of the funds for Puerto Rico, Guam, American Samoa, and the Virgin Islands, one-half of the remainder would be allocated for each recession quarter to eligible State governments in proportion to their respective shares of the national decline in real wages and salaries and their tax effort. A State is eligible if it has experienced a two-quarter decline in seasonally adjusted wages and salaries during quarters when title IV is funded or within one year prior to the first funded quarter. A State government remains eligible until its seasonally adjusted real wages and salaries equals or exceeds its base period amount or until the national program terminates, whichever occurs first.

Payments would be made to a State government whenever its seasonally adjusted real wages and salaries are below its pre-recession base period as long as the national program is operative. If a State government's real wages and salaries rise above its base period for any quarter, it would not receive a payment for that quarter. However, it would not require two consecutive quarters of decline to requalify.

The other half of the funds would be allocated to county areas on the basis of each county's proportionate share of the total decline in seasonally adjusted real wages and salaries and its general revenue sharing entitlement. The decline for each county area would be computed from its State's pre-recession base period, or the two calendar quarters constituting the national base period, whichever occurs first.

Allocations to local governments within each county area would be made proportionate to their respective shares of the most recent revenue sharing payments. The minimum payment to any unit of government would be $1,000 for any quarter. Money not allocated to governments which do not qualify for the minimum payment would be allocated to their county government.

SECTION-BY-SECTION ANALYSIS

TITLE I—EXTENSION AND REVISION OF THE STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

Title I of H.R. 7112 extends and revises the State and Local Fiscal Assistance Act of 1972 (the Act).

Section 101—Extension and revision of allocations

Section 101(a): Amends the Act by striking Sections 105, 106, and 107, and inserting new sections 105 and 106 as follows:

Section 105 continues the provisions for the State and Local Government Fiscal Assistance Trust Fund as established in the Act, with the Secretary of the Treasury as Trustee. It authorizes the appropriation of $4,566,700,000 for each entitlement period to pay local government units' entitlements. Entitlement periods are October 1, 1980 to September 30, 1981; October 1, 1981 to September 30, 1982; and October 1, 1982, to September 30, 1983. The Secretary is required to transfer from the Trust Fund to the Treasury's general fund any monies not needed to make payments under the program.

Section 106 provides for allocations to each State out of the funds authorized in Section 105. The section incorporates the Act's provisions for the alternative "three factor formula" and "five factor formula" systems for determination of allocable amounts for each State. Section 106 eliminates the provision for adjustment for noncontiguous states currently in the Act.

Section 101(b): Provides conforming amendments as follows:

Subsection (b)(1): Amends section 102 of the Act, authorizing the Secretary to make payments out of the Trust Fund, to remove references to payments to State governments.

Subsection (b)(2): Amends Section 108 of the Act, dealing with entitlements of local governments, as follows:

(A) Provides that the maximum and minimum per capita entitlement of any unit of local government shall be determined on the basis of the amount allocated to the State, rather than on the basis of the two-thirds share currently provided for units of local government in the Act.

(B) Removes the Act's references to de minimus provisions for entitlement periods of under one year.

(C) Provides that amounts to be reallocated from units of local government due to the maximum and minimum per capita constraint shall go to the other units of local governments in the

State, rather than to the State government as the Act currently provides.

(D) Provides that amounts to be reallocated from county governments due to the maximum and minimum per capita constraints shall go to the county governments in the State, rather than to the State government as the Act currently provides.

(E) Extends to September 30, 1983, the applicability of State laws providing for optional allocation formulas.

Subsection (b)(3): Changes the definition of "entitlement period" to the years beginning October 1, 1980, 1981, and 1982.

Subsection (b)(4): Strikes a reference in Section 143(a) of the Act, dealing with judicial review, to State entitlements.

Section 102—Modification of local allocation formula provisions

Section 102(a): Amends Section 108(d)(1) of the Act, which defines the term "unit of local government", to require that such a governmental unit must impose taxes or receive intergovernmental transfers for the substantial performance of at least two of the following services: police protection; courts and correction; fire protection; health services; social services for the poor or aged; public recreation; public libraries; zoning or land use planning; sewerage disposal or water supply; solid waste disposal; pollution abatement; road or street construction and maintenance or street lighting; mass transportation; and education. An eligible unit of government must also spend at least 10 percent of its total expenditures (exclusive of general and financial administration and assessment of property) for each of the two services. However, this requirement does not apply to a unit which performs four or more of the aforementioned services.

The unit of local government shall be deemed to impose a tax if that tax is collected by another governmental entity from the geographical area served by that unit of local government and an amount equivalent to the net proceeds of that tax is paid to that unit of local government.

The subsection also requires the Secretary of the Treasury to conduct a study of the services provided by units of local government and to report to the President and Congress within one year after the date of enactment of the Act on the results of the study.

A conforming amendment to Section 123(a)(7) of the Act, dealing with assurances to the Secretary, is provided to reflect the above addition to the definition of unit of local government.

Section 102(b): Repeals the provision in subsection 108(e) of the Act for allocation to separate law enforcement officers in any county area in the State of Louisiana. It also makes a conforming amendment to reflect this repeal.

Section 102(c): Adds to section 109(e) of the Act, dealing with the general tax effort factor of units of local government, a new provision applying a constraint on the adjusted taxes of such unit, equal to 250 percent of the average per capita adjusted tax for similarly classified units in that State. An exception is provided for units of local government that are the only unit within the county area in which they are located.

Section 103—Administrative provisions

Section 103(a): Eliminates the requirement in Section 121 of the Act for recipient governments to submit annual reports on the use of revenue sharing funds. It also makes technical and conforming changes to reflect the elimination of the report requirement.

Section 103(b): Adds to the Statement of Assurances required by Section 123(a) of the Act to be submitted to the Secretary, two additional assurances: of compliance with the public hearing and publication provisions of Section 121 of the Act and of compliance with the accounting, auditing, and evaluation requirements of Section 123(c) of the Act.

Section 103(c): Amends the audit requirements in Section 123(c) of the Act to require (after October 1, 1980) an audit at least once every two years covering both years, instead of every three years. It makes conforming amendments to reflect this change. The waiver provision of that section of the Act is amended to permit the Secretary to waive the audit required by the 1976 Amendments, in whole or in part, if the governmental unit has been audited by a State audit agency which does not follow generally accepted auditing standards or which is not independent, provided that such State audit agency demonstrates progress toward meeting generally accepted auditing standards or becoming independent. The subsection also provides for combining, when practicable, the audit requirements pursuant to Office of Management and Budget directives and the audit requirements of the Act.

Section 103(d): Repeals Section 145 of the Act, which required a study by the Advisory Commission on Intergovernmental Relations of the relationship between revenue sharing and federalism. The study has been completed.

Section 103(e): Provides authority for the Director of the Office of Management and Budget to except programs authorized by the Act from the provisions of the Federal Grant and Cooperative Agreements Act of 1977.

Section 104—Technical amendment

Section 104 amends Section 102(b) of the Act to provide that no payment for an entitlement period before October 1, 1980, shall be adjusted because of updated figures resulting from the 1980 decennial census.

Section 105—Effective date

Section 105 provides an effective date for the amendments made by this Title of entitlement periods beginning on or after October 1, 1980.

TITLE II—ANTIRECESSION FISCAL ASSISTANCE

Title II of H.R. 7112 amends the Act to provide an antirecession fiscal assistance program by adding a new Title IV, "Fiscal Assistance During Periods of Recession."

Section 401—Financial assistance authorized

Section 401(a): Authorizes the Secretary of the Treasury to make payments to eligible governmental units in accordance with this Title.

Section 401(b): Authorizes appropriations for each eligible calendar quarter which is one of twelve calendar quarters beginning after October 1, 1980. The total amount appropriated shall not exceed $1 billion for each of fiscal years 1981, 1982, and 1983, and the amount during each eligible quarter shall not exceed the lesser of the product of the economic decline factor for that quarter, multiplied by $10 million, or $300 million.

Section 401(c): Provides for one percent of the amount appropriated to be allocated to territorial governments. One-half of the remainder is to be allocated to eligible State governments, with the other one-half allocated to eligible units of local government.

Section 401(d): Defines "eligible calendar quarters," "aggregate real wages and salaries," "real gross national product," "economic decline factor," "base period amount," and "national base period."

Section 402—State government allocation

Section 402(a): Provides for each eligible State government to receive from each quarter's available funds an amount proportional to the product of that State's economic decline factor, multiplied by its tax effort factor.

Section 402(b): Defines "eligible State government," "eligible State quarter," "economic decline factor," "tax effort factor of State governments," "base period amount," "State base period," and "aggregate real wages and salaries of a State."

Section 403—Allocation to units of local government

Section 403(a): Provides for determination of allocable amounts. The allocable amount for each eligible county area is proportional to the product of the county area's economic decline factor for the quarter, multiplied by the county area's revenue sharing amount. Indian tribes and Alaskan native villages are assigned an allocable amount proportional to their revenue sharing amount within the county area. After allocable amounts for Indian tribes and Alaskan native villages are subtracted, units of local government are assigned an allocable amount proportional to their share of local government units' revenue sharing amounts within the county area.

Section 403(b): Provides for allocation of allocable amounts to each unit of local government, Indian tribe, and Alaskan native village. No allocation shall be made to a unit of local government, Indian tribe, or Alaskan native village whose allocable amount is under $1,000. The section also provides that any allocable amounts within a county which are not allocated because of the above restriction shall be added to the county government's allocation.

Section 403(c): Defines "eligible county area," "economic decline factor," "base period amount," "county area base period," "aggregate real wages and salaries of a county area," "county area revenue sharing amount," and "unit of local government revenue sharing amount."

Section 404—Statement of assurances

Section 404 requires each recipient state and unit of local government to file a statement of assurances relating to fiscal, accounting, and auditing procedures and access to materials for compliance review; furnishing of reports; compliance with nondiscrimination requirements; compliance with labor standards requirements;

and expenditure of program funds in accordance with the government's applicable laws and procedures.

Section 405—Nondiscrimination

Section 405(a): Prohibits any state government or local governmental unit receiving funds under this title from discriminating on the basis of race, color, national origin, or sex. Statutory prohibitions against discrimination on the basis of age, handicaps, and religion also are incorporated. Exceptions are provided for government units which demonstrate that the discriminatory activity is not funded with funds under this Title, and, in cases of discrimination on the basis of handicapped status, for construction projects begun before January 1, 1977.

Section 405(b): Incorporates the enforcement mechanism required by Sections 122, 124, and 125 of the Act. The Attorney General's responsibilities under Section 122 (g) and (h) and 124(c) of the Act are incorporated, and aggrieved persons under this Title have the rights and remedies of persons aggrieved by a violation of Section 122(a) of the Act, including the rights provided under Section 124(e) of the Act.

Section 406—Labor standards

Section 406 requires that any construction project which is funded 25 per cent or more by this Title comply with the wage standards of the Davis-Bacon Act.

Section 407—Governmental definitions and related rules

Section 407 defines "state," "units of local government," and "townships." It also provides rules for states with units of government other than counties immediately below state level, units of government located in a larger entity, parts of units of local government located in a larger entity, boundary changes and other governmental reorganizations and treatment of the District of Columbia.

Section 408—Payments

Section 408(a): Directs the Secretary to pay allocated amounts to State governments for the first eligible calendar quarter within 30 days after receiving data from the Secretary of Commerce regarding the second of such quarters, and within 30 days after receiving data regarding such quarter for eligible calendar quarters thereafter. Local units of government located in eligible county areas are to receive payments within 30 days after receipt of data regarding any eligible quarter.

Section 408(b) allows for adjustments to payments to correct overpayments or underpayments under title IV.

Section 408(c) directs the Secretary of Commerce to provide to the Secretary the data required under Sections 401(d)(2), 402(b)(6), and 403(c)(5), as soon as practicable.

Section 409—Withholding

Section 409 specifies conditions under which the Secretary shall withhold payments for failure to comply with required assurances.

Section 410—Reports

Section 410(a): Requires the Secretary to report to Congress on the operation of title IV every calendar quarter of the program's operation.

Section 410(b): Requires an annual report to Congress at the end of each fiscal year during the program's operation.

Section 411—Administration

Section 411(a): Requires the Secretary to prescribe the necessary rules for the implementation of title IV, after consultation with the Secretary of Commerce, within 90 days of enactment of this title.

Section 411(b): Authorizes appropriation of funds for the administration of title IV.

Section 412—Authorization of appropriations for Puerto Rico, Guam, American Samoa, and the Virgin Islands

Section 412 provides for allocation to Puerto Rico, Guam, American Samoa, and the Virgin Islands from the amount set aside for territorial governments, in amounts proportional to each jurisdiction's percentage of the total territorial population. The territorial governments shall redistribute these amounts to local governments as they deem appropriate.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The following estimate prepared by the Congressional Budget Office in accordance with section 403 of the Congressional Budget Act is submitted as required by subdivision (c) of clause (2)(1)(3) of House Rule XI:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., September 2, 1980.

Hon. L. H. FOUNTAIN,
Chairman, Subcommittee on Intergovernmental Relations and Human Resources, Committee on Government Operations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate for H.R. 7112, the Stat and Local Fiscal Assistance Act Amendments of 1980.

Should the Committee so desire, we would be pleased to provid further details on the attached cost estimate.

Sincerely,

ROBERT D. REISCHAUER,
For Alice M. Rivlin, Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE—SEPTEMBER 2, 198

1. Bill number: H.R. 7112.

2. Bill title: State and Local Fiscal Assistance Act Amendment of 1980.

3. Bill status: As ordered reported by the House Committee o Government Operations, August 4, 1980 (based on draft provided b committee staff on September 1, 1980).

4. Bill purpose: The bill authorizes an extension and amendment of the revenue sharing program to provide general purpose fiscal assistance to state and local governments, and for other purposes.

Title I of this bill provides for the extension and revision of the State and Local Fiscal Assistance Act of 1972 by establishing on the books of the U.S. Treasury a trust fund known as the State and Local Government Fiscal Assistance Trust Fund. This trust fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it. There are authorized to be appropriated to the trust fund $4.5667 billion per year to pay the entitlements of units of local government for fiscal years 1981-1983.

Title II of this bill provides for fiscal assistance during periods of recession by making payments to state governments and units of local government for each eligible calendar quarter—determined by two consecutive quarterly declines in real wages and salaries and real GNP, as measured from a base determined by averaging the two prerecession quarters. Appropriations for Title II would be limited to $1 billion per year for fiscal years 1981-1983. of the amount appropriated for any calendar quarter, 1 percent shall be allocated to territorial governments. Of the remaining amount, half shall be allocated to state governments and half to units of local government.

5. Cost estimate: The budget impact of this bill is summarized in the following table:

[By fiscal year, in millions of dollars]

	1981	1982	1983	1984
Authorization level	5,567	5,567	5,567	
Estimated outlays:				
Title I	3,425	4,567	4,567	1,142
Title II	830	1,155	355	
Total	4,255	5,722	4,922	1,142

The costs of this bill fall within budget function 850. Under existing law, outlays for general revenue sharing in fiscal year 1981 are estimated to be $1,716 million. When Title I of this bill and current law are combined, total outlays for general revenue sharing in fiscal year 1981 would be $5,141 million.

6. Basis of estimate: Estimates for Title I are based on the assumption that the amounts authorized will be fully appropriated. It is also assumed that disbursements will take place five days after the end of the quarter in which obligations are made. This feature of the existing program results in a one-quarter lag in payments.

Under Title II, the Secretary of the Treasury shall make payments to state governments and units of local government for each eligible calendar quarter to help offset the effects of an economic recession. The total amount that may be appropriated may not exceed $1 billion for fiscal years 1981, 1982, and 1983. The amount that may be appropriated for any eligible calendar quarter shall not exceed the lesser of either the product of the economic decline factor for such quarter multiplied by $10 million, or $300 million.

Of the amount appropriated, 1 percent shall be set aside for territorial governments and, of the remainder, half shall be allocated to state governments and half shall be allocated to units of local government. These funds are to be distributed to state and local governments after two consecutive calendar quarters in which real GNP and real wages and salaries for states and localities have declined. Payments shall not be made later than 30 days after the receipt of data regarding the second of such quarters and each subsequent eligible quarter. The Bureau of Economic Analysis estimates that data on real wages and salaries for the state level would be available for use four months after the close of each quarter and that data on real wages and salaries on the county level would be available for use eight months following the close of each quarter.

Payments under Title II are shown in the following table:

Quarter in which payments are made		Quarter on which payments are based		Payments to State governments (in millions of dollars)	Payments to units of local government (in millions of dollars)	Payments by fiscal year quarter (in millions of dollars)	Payments by fiscal year (w/ limitations) (in millions of dollars)
Calendar year	Fiscal year	Calendar year	Fiscal year				
1981:1	1981:2	1980:2 & 3	1980:3 & 4	265	....	265	830
1981:2	1981:3	1980:4	1981:1	150	....	150	
1981:3	1981:4	1981:1	1981:2	150	265	415	
1981:4	1982:1	1981:2	1981:3	150	150	300	1,155
1982:1	1982:2	1981:3	1981:4	150	150	300	
1982:2	1982:3	1981:4	1982:1	150	150	300	
1982:3	1982:4	1982:1	1982:2	105	150	255	
1982:4	1983:1	1982:2	1982:3	50	150	200	355
1983:1	1983:2	1982:3	1982:4	....	105	105	
1983:2	1983:3	1982:4	1983:1	....	50	50	

Estimates for Title II are based on the assumption that real GNP will decline during three quarters in calendar year 1980 and that real wages and salaries will decline during 1980 and 1981. It is also assumed that the authorization level stated in the bill will be fully appropriated.

7. Estimate comparison: None.

8. Previous CBO estimate: An estimate for this bill prepared on August 28, 1980, was based on a draft of the bill received on August 11. The revised draft received on September 1 clarifies the wording as to when real wages and salaries and real GNP should begin to be counted towards an eligible calendar quarter. The uncertainty about the wording in earlier draft of the bill was noted in the previous estimate. Estimated costs are unchanged.

9. Estimate prepared by: Jim Capra.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT

In compliance with clause 2(1)(4) of House Rule XI, it is the opinion of the committee that the provisions of this bill conceivably could have an inflationary impact on prices and costs in the operation of the national economy.

OVERSIGHT FINDINGS

The Intergovernmental Relations and Human Resources subcommittee conducted a comprehensive review, including hearings, of the operation of the general revenue sharing program, but did not issue an oversight report. The subcommittee's findings have served as the basis for many of the changes considered or actually adopted by the committee in marking up this legislation. The fiscal assistance program authorized by title II for recession periods is a new program.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority has been provided in the First Concurrent Resolution on the fiscal 1981 budget for the expenditures authorized by title I of this bill.

COMMITTEE ESTIMATE OF COST

Total cost of the general revenue sharing program authorized by title I of H.R. 7112 will be $13.7 billion for fiscal years 1981, 1982 and 1983. The committee views the Congressional Budget Office estimate of $2.185 billion for fiscal years 1981, 1982 and 1983 as a reasonable projection of the cost of the recession-related assistance authorized by title II.

REVIEW OF EXISTING LAW

In compliance with subdivision (A) of clause 2(1)(3) of House Rule XI, the Intergovernmental Relations and Human Resources Subcommittee has continuously reviewed the provisions and administration of the laws relating to general-purpose fiscal assistance to State and local governments.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

TITLE I—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subtitle A—Allocation and Payment of Funds

* * * * * * *

SEC. 102. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

(a) IN GENERAL.—Except as otherwise provided in this title, the Secretary shall, for each entitlement period, pay out of the Trust Fund to [—

(1) each State government a total amount equal to the entitlement of such State government determined under section 107 for such period, and

(2) each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period.] *each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period.*

In the case of entitlement periods ending after the date of the enactment of this Act, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a[State government or] a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

(b) Limitations on Adjustments.—No adjustment shall be made to increase or decrease a payment made for any entitlement period beginning after December 31, 1976, to a [State government or] a unit of local government, unless a demand therefor shall have been made by such government or the Secretary within 1 year of the end of the entitlement period with respect to which the payment was made. *No adjustment shall be made to increase or decrease a payment for any entitlement period beginning prior to October 1, 1980, on the basis of revisions to the 1970 census-based population and income estimates for years prior to 1980 as a result of data from the 1980 decennial census.*

(c) Reserves for Adjustments.—The Secretary may reserve such percentage (not exceeding 0.5 percent) of the total entitlement payment for any entitlement period with respect to [any State government and] all units of local government within [such] *a* State as he deems necessary to insure that there will be sufficient funds available to pay adjustments due after the final allocation of funds among such governments.

SEC. 105. CREATION OF TRUST FUND; APPROPRIATIONS; AUTHORIZATIONS FOR ENTITLEMENTS.

[(a) Trust Fund.—

[(1) In general.—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subtitle as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b) or (c). Except as provided in this title, amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subtitle.

[(2) Trustee.—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.

[(b) Appropriations.—

[(1) In general.—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

[(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,650,000,000;

[(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,650,000,000;

[(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,987,500,000;

[(D) for the fiscal year beginning July 1, 1973, $6,050,000,000;

[(E) for the fiscal year beginning July 1, 1974, $6,200,000,000;

[(F) for the fiscal year beginning July 1, 1975, $6,350,000,000; and

[(G) for the period beginning July 1, 1976, and ending December 31, 1976, $3,325,000,000.

[(2) Noncontiguous states adjustment amounts.—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

[(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,390,000;

[(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,390,000;

[(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,390,000;

[(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, $4,780,000; and

[(E) for the period beginning July 1, 1976, and ending December 31, 1976, $2,390,000.

[(3) Deposits.—Amounts appropriated by paragraphs (1) and (2) for any fiscal year or other period shall be deposited in the Trust Fund on the later of (A) the first day of such year or period, or (B) the day after the date of enactment of this Act.

[(c) Authorization of Appropriations for Entitlements.—

[(1) In general.—In the case of any entitlement period described in paragraph (3), there are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided for such entitlement period an amount equal to $6,650,000,000 times a fraction—

[(A) the numerator of which is the amount of the Federal individual income taxes collected in the last calendar year ending more than one year before the end of such entitlement period, and

[(B) the denominator of which is the amount of the Federal individual income taxes collected in the calendar year 1975.

The amount determined under this paragraph is not to exceed $6,850,000,000.

[(2) Noncontiguous states adjustment amounts.—In the case of any entitlement period described in paragraph (3), there are authorized to be appropriated to the Trust Fund to pay the entitlements hereinafter provided for such entitlement period an amount equal to $4,780,000 times a fraction—

[(A) the numerator of which is the amount of the Federal individual income taxes collected in the last calendar year ending more than one year before the end of such entitlement period, and

[(B) the denominator of which is the amount of the Federal individual income taxes collected in the calendar year 1975.

The amount determined under this paragraph is not to exceed $4,923,759.

[(3) Entitlement periods.—The following entitlement periods are described in this paragraph:

[(A) The entitlement period beginning January 1, 1977, and ending September 30, 1977;

[(B) The entitlement period beginning October 1, 1977, and ending September 30, 1978;

[(C) The entitlement period beginning October 1, 1978, and ending September 30, 1979; and

[(D) The entitlement period beginning October 1, 1979, and ending September 30, 1980.

[(4) Short entitlement period.—In the case of an entitlement period of 9 months which follows an entitlement period of 6 months—

[(A) the amount determined under paragraph (1) for such 9-month period shall be reduced by one-half the amount appropriated for such 6-month period under subsection (b)(1), and

[(B) the amount determined under paragraph (2) for such entitlement period shall be reduced by one-half the amount appropriated for such 6-month entitlement period under subsection (b)(2).

[(d) Transfers From Trust Fund to General Fund.—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

[SEC. 106. ALLOCATION AMONG STATES.

[(a) In General.—There shall be allocated an entitlement to each State—

[(1) for each entitlement period beginning before December 31, 1976, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b); and

[(2) for each entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(1) for that entitlement period, an amount which bears the same ratio to the amount authorized under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

[(b) Determination of Allocable Amount.—

[(1) IN GENERAL.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if—

[(A) in the case of an entitlement period beginning before December 31, 1976, the amount allocable to such State under paragraph (3) is greater than the sum of the amounts allocable to such State under paragraph (2) and subsection (c); and

[(B) in the case of an entitlement period beginning on or after January 1, 1977, the amount allocable to such State under paragraph (3) is greater than the amount allocable to such State under paragraph (2).

[(2) THREE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to $5,300,000,000 as—

[(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

[(B) the sum of the products determined under subparagraph (A) for all States.

[(3) FIVE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

[(A) ⅓ of $3,509,000,000 were allocated among the States on the basis of population,

[(B) ⅓ of $3,500,000,000 were allocated among the States on the basis of urbanized population,

[(C) ⅓ of $3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income.

[(D) ½ of $1,800,000,000 were allocated among the States on the basis of income tax collections, and

[(E) ½ of $1,800,000,000 were allocated among the States on the basis of general tax effort.

[(c) NONCONTIGUOUS STATES ADJUSTMENT.—

[(1) IN GENERAL.—In addition to the amounts allocated to the States under subsection (a), there shall be allocated for each entitlement period an additional amount to any State in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code—

[(A) in the case of an entitlement period beginning before December 31, 1976, out of amounts appropriated under section 105(b)(2), if the allocation of such State under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection; and

[(B) in the case of an entitlement period beginning on or after January 1, 1977, out of amounts authorized under section 105(c)(2).

[(2) DETERMINATION OF AMOUNT.—The additional amount allocable to any State under this subsection for any entitlement period is an amount equal to a percentage of the amount allocable to that State under subsection (b) for that period which is the same as the percentage of basic pay received by such employees stationed in that State as an allowance under such section 5941. If the total amount appropriated under section 105(b)(2) for any entitlement period beginning before December 31, 1976, or authorized under section 105(c)(2) for any entitlement period beginning on or after January 1, 1977, is not sufficient to pay in full the additional amounts allocable under this subsection for that period, the Secretary shall reduce proportionately the amounts so allocable.

[SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS.

[(a) DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 108.

[(b) STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.—

[(1) GENERAL RULE.—

[(A) PRE-1977 ENTITLEMENT PERIODS.—The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, and before December 31, 1976, shall be reduced by the amount (if any) by which—

[(i) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

[(ii) the similar aggregate amount for the one-year period beginning July 1, 1971.

[(B) POST-1976 ENTITLEMENT PERIODS.—The entitlement of any State government for any entitlement period beginning on or after January 1, 1977, shall be reduced by the amount (if any) by which—

[(i) one-half of the aggregate amounts transferred by the State government (out of its own sources) during the 24-month period ending on the last day of the last fiscal year of such State for which the relevant data are available (in accordance with regulations prescribed by the Secretary) on the first day of such entitlement period, to all units of local government in such State, is less than,

[(ii) one-half of the similar aggregate amount for the 24-month period ending on the day before the start of the 24-month period described in clause (i).

[(C) For purposes of subparagraphs (A)(i) and (B)(i), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

[(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(A)(ii) or (1)(B)(ii) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the period utilized for purposes of such paragraph it transferred to units of local government.

[(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(A)(ii) (in the case of an entitlement period beginning before December 31, 1976) or paragraph (1)(B)(ii) (in the case of an entitlement period beginning on or after January 1, 1977) shall be reduced to the extent of the larger of—

[(A) an amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

[(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

[(4) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1973.—In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (1)(A) shall be treated as being the one-year period beginning July 1, 1972.

[(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.—In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be one-half of the amounts which (but for this paragraph) would be taken into account.

[(6) SPECIAL RULE FOR THE PERIOD BEGINNING JANUARY 1, 1977.—In the case of the entitlement period beginning January 1, 1977, and ending September 30, 1977, the aggregate amounts taken into account under clauses (i) and (ii) of paragraph (1)(B) shall be three-fourths of the amount which (but for this paragraph) would be taken into account.

[(7) ADJUSTMENT WHERE FEDERAL GOVERNMENT ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If, for an entitlement period beginning on or after January 1, 1977, a State government establishes to the satisfaction of the Secretary that during all or part of the period utilized for purposes of paragraph (1)(B)(i), the Federal Government has assumed responsibility for a category of expenditures for which such State government transferred amounts which (but for this paragraph) would be included in the aggregate amount taken into account under paragraph (1)(B)(ii) for the period utilized for purposes of such paragraph, then (under regulations prescribed by the Secretary) the aggregate amount taken into account under paragraph (1)(B)(ii) shall be reduced to the extent that increased Federal Government spending in that State for such category of expenditures has replaced corresponding amounts which such State government had transferred to units of local government during the period utilized for purposes of paragraph (1)(B)(ii).

[(8) Reduction in entitlement.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payment to such State government under this subtitle an amount equal to such reduction.

[(9) Transfer to general fund.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

[(c) Cross Reference.—

For reduction of State government entitlement because of provision for separate law enforcement officers, see section 108(e).]

SEC. 105. CREATION OF TRUST FUND; AUTHORIZATION OF APPROPRIATIONS.

(a) Trust Fund.—

(1) In general.—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and local Government Fiscal Assistance Trust Fund" (referred to in this subtitle as the "Trust Fund." The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b). Except as provided in this title, amounts in the Trust Fund may be used only for the payments to local governments provided by this subtitle.

(2) Trustee.—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.

(b) Authorization of Appropriations for Entitlements of Local Governments.—

(1) In general.—In the case of any entitlement period described in paragraph (2), there are authorized to be appropriated to the Trust Fund $4,566,700,000 to pay the entitlements of units of local government hereinafter provided for such entitlement period.

(2) Entitlement periods.—The following entitlement periods are described in this paragraph:

(A) The entitlement period beginning October 1, 1980, and ending September 30, 1981;

(B) The entitlement period beginning October 1, 1981, and ending September 30, 1982; and

(C) The entitlement period beginning October 1, 1982, and ending September 30, 1983.

(c) Transfers From Trust Fund to General Fund.—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to units of local government under this subtitle.

SEC. 106. ALLOCATION AMONG STATES OF FUNDS FOR LOCAL GOVERNMENT ENTITLEMENTS.

(a) In General.—There shall be allocated an entilement to each State for each entitlement period beginning on or after October 1, 1980, out of amounts authorized under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount authorized under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

(b) Determination of Allocable Amount.—

(1) In general.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to such State under paragraph (3) is greater than the amount allocable to such State under paragraph (2).

(2) Three factor formula.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to $5,300,000,000 as—

(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) Five factor formula.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

(A) 1/3 of $3,500,000,000 were allocated among the States on the basis of population,

(B) 1/3 of $3,500,000,000 were allocated among the States on the basis of urbanized population,

(C) 1/3 of $3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income,

(D) 1/2 of $1,800,000,000 were allocated among the States on the basis of income tax collections, and

(E) 1/2 of $1,800,000,000 were allocated among the States on the basis of general tax effort.

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SEC. 108. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) * * *

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(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.—

(1) COUNTY GOVERNMENTS.—* * *

* * * * * * *

(6) ENTITLEMENT.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection (after taking into account any applicable modification under subsection (c)).

(B) MAXIMUM AND MINIMUM PER CAPITA ENTITLEMENT.—Subject to the provisions of subparagraphs (C) and (D), the per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be less than 20 percent, nor more than 145 percent, of [two-thirds of] the amount allocated to the State under section 106, divided by the population of that State.

* * * * * * *

(D) ENTITLEMENT LESS THAN $200, OR GOVERNING BODY WAIVES ENTITLEMENT.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than $200 for any entitlement period [$100 for an entitlement period of 6 months, $150 for an entitlement period of 9 months], or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located. If the entitlement of an Indian tribe or Alaskan native village is waived for any entitlement period by the governing body of that tribe or village, then the amount of such entitlement for such period shall (in lieu of being paid to such tribe or village) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such tribe or village is located.

(7) ADJUSTMENT OF ENTITLEMENT.—

(A) IN GENERAL.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, [any adjustment required under paragraph (6)(D) next, and any adjustment required under subsection (e) last.] *and any adjustment required under paragraph (6)(D) last.*

(B) **Adjustment for application of maximum or minimum per capita entitlement.**—The Secretary shall adjust the allocations made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) **Adjustment for application of limitation.**—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase [the entitlement of the State government of the State in which that unit of local government is located]; *ratably the entitlement of the other units of local government (other than a county government) in that county which are not constrained by paragraph (6) from receiving it, or, if all such other units of local government are so constrained, such amount shall be added to and increase ratably the entitlement of each such government and*

(ii) in the case of a county government, shall be added to and increase [the entitlement of the State government of the State in which it is located] *ratably the entitlement of the other county governments in that State which are not constrained by paragraph (6) from receiving it, or, if all such other county governments are so constrained, such amount shall be added to and increase ratably the entitlement of each such government.*

(c) **Special Allocation Rules.**—

(1) **Optional formula.**—A State may by law provide for the allocation of funds among county areas, or among units of local government (other than county governments), on the basis of the population multiplied by the general tax effort factors of such areas or units of local government, on the basis of the population multiplied by the relative income factors of such areas or units of local government, or on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsection (a), or by paragraphs (2) and (3) of subsection (b), shall notify the Secretary of such law not later than 30 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall—

(A) provide for allocating 100 percent of the aggregate amount to be allocated under subsection (a), or under paragraphs (2) and (3) of subsection (b);

(B) apply uniformly throughout the State; and

(C) apply during the period beginning on the first day of the first entitlement period to which it applies and ending on September 30, [1980.] *1983.*

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(d) Governmental Definitions and Related Rules.—For purposes of this title—

[(1) Units of local government.—The term "unit of local government" means the government of a county, municipality, or township, which is a unit of general government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions. Such term also means (but only for purposes of subtitles B and C) the office of the separate law enforcement officer to which subsection (e)(1) applies.]

(1) Unit of local government.—

(A) In general.—The term "unit of local government" means the government of a county, municipality, or township which is a unit of general government as determined by the Bureau of the Census for general statistical purposes, and which with respect to entitlement periods beginning on or after October 1, 1980, meets the requirements specified in subparagraph (B), and imposes taxes or receives intergovernmental transfers for substantial performance for its citizens of at least two of the services described in subparagraph (C). Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions.

(B) Limitation.—To be considered a unit of local government for purposes of this Act, at least 10 per centum of a local government's total expenditures (exclusive of expenditures for general and financial administration and for the assessment of property) in the most recent fiscal year must have been for each of two of the public services described in subparagraph (C), except that the foregoing restriction shall not apply to a unit of local government which substantially performs four or more of such public services.

(C) Public services.—The services described in this subparagraph are (i) police protection; (ii) courts and corrections; (iii) fire protection; (iv) health services; (v) social services for the poor or aged; (vi) public recreation; (vii) public libraries; (viii) zoning or land use planning; (ix) sewerage disposal or water supply; (x) solid waste disposal; (xi) pollution abatement; (xii) road or street construction and maintenance or street lighting; (xiii) mass transportation; and (xiv) education.

(D) IMPOSITION OF TAXES.—For the purposes of this subsection a unit of local government shall be deemed to impose a tax if that tax is collected by another governmental entity from the geographical area served by that unit of local government and an amount equivalent to the net proceeds of that tax is paid to that unit of local government.

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[(e) SEPARATE LAW ENFORCEMENT OFFICERS.—

[(1) ENTITLEMENT OF SEPARATE LAW ENFORCEMENT OFFICERS.—The office of the separate law enforcement officer for any county area in the State of Louisiana, other than the parish of East Baton Rouge, shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, an amount equal to 15 percent of the amount which would (but for the provisions of this subsection) be the entitlement of the government of such county area. The office of the separate law enforcement officer for the parish of East Baton Rouge shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, an amount equal to 7.5 percent of the sum of the amounts which would (but for the provisions of this subsection) be the entitlements of the governments of Baton Rouge, Baker, and Zachary, Louisiana, for each such entitlement period.

[(2) REDUCTION OF ENTITLEMENT OF COUNTY GOVERNMENT.—The entitlement of the government of a county area for an entitlement period shall be reduced by an amount equal to one half of the entitlement for the separate law enforcement officer for such county area for such entitlement period. For the purpose of applying this paragraph to the parish of East Baton Rouge, Louisiana, the entitlements of the governments of Baton Rouge, Baker, and Zachary, Louisiana, for each entitlement period shall each be reduced by an amount equal to 3.75 percent of the amount which would (but for the provisions of this paragraph) be the entitlement of each such government.

[(3) REDUCTION OF ENTITLEMENT OF STATE GOVERNMENT.—The entitlement of the State government of Louisiana for an entitlement period shall be reduced by an amount equal to the sum of the reductions provided under paragraph (2) for governments of county areas in such State for such entitlement period. For purposes of this paragraph—

[(A) the reductions provided under paragraph (2) for the governments of Baton Rouge, Baker, and Zachary, Lousiana, shall be considered as reductions of entitlements of governments of county areas, and

[(B) the entitlement of the parish of Orleans for an entitlement period shall be considered to have been reduced by an amount equal to the additional amount provided for such parish for that entitlement period under paragraph (4).

[(4) ENTITLEMENT OF PARISH OF ORLEANS.—In the case of the parish of Orleans, Louisiana, paragraphs (1) and (2) shall not apply, and such parish shall be entitled to receive, for each entitlement period beginning after December 31, 1976, an addi-

(c) Limitation for Defined Contribution Plans.—

(1) In general.— * * *

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(6) Special limitation for employee stock ownership plan.—

(A) In the case of an employee stock ownership plan (as defined in subparagraph (B)), under which no more than one-third of the employer contributions for a year are allocated to the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii), the amount described in paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1)) for a year with respect to any participant shall be equal to the sum of (i) the amount described in paragraph (c)(1)(A) (as so adjusted) determined without regard to this paragraph and (ii) the lesser of the amount determined under clause (i) or the amount of employer securities contributed, ***or purchased with cash contributed,*** to the employee stock ownership plan.

(B) For purposes of this paragraph—

(i) the term "employee stock ownership plan," means an employee stock ownership plan (within the meaning of section 4975(e)(7)) of a tax credit employee stock ownership plan,

(ii) the term "employer securities" has the meaning given to such term by section 409A,

(iii) an employee described in this clause is any participant whose compensation for a year exceeds an amount equal to twice the amount described in paragraph (c)(1)(A) for such year (as adjusted for such year pursuant to subsection (d)(1)), determined without regard to subparagraph (A) of this paragraph, and

(iv) an individual shall be considered to own more than 10 percent of the employer's stock if, without regard to stock held under the employee stock ownership plan, he owns (after application of section 1563(e)) more than 10 percent of the total combined voting power of all classes of stock entitled to vote or more than 10 percent of the total value of shares of all classes of stock.

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Subchapter F—Exempt Organizations

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PART I—GENERAL RULE

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SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) Exemption From Taxation.—* * *

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(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) * * *

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(12) (*A*) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses. [In the case of any mutual or cooperative telephone company, the preceding sentence shall be applied without taking into account any income received or accrued from a nonmember telephone company for the performance of communication services which involve members of such mutual or cooperative telephone company.]

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company.

(ii) from qualified pole rentals, or

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications..

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

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PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

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SEC. 513. UNRELATED TRADE OR BUSINESS.

(a) GENERAL RULE.— * * *

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(g) CERTAIN POLE RENTALS.—In the case of a mutual or cooperative telephone or electric company, the term "unrelated trade or business"

does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D)).

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PART VII—CERTAIN HOMEOWNERS ASSOCIATIONS

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SEC. 528. CERTAIN HOMEOWNERS ASSOCIATIONS.

(a) GENERAL RULE.— * * *

[(b) TAX IMPOSED.—

[(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b).

[(2) ALTERNATIVE TAX IN CASE OF CAPITAL GAINS.—If for any taxable year any homeowners association has a net capital gain, then in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)) which shall consist of the sum of—

[(A) a partial tax, computed as provided by paragraph (1), on the homeowners association taxable income determined by reducing such income by the amount of such gain, and

[(B) an amount determined as provided in section 1201(a) on such gain.]

(b) TAX IMPOSED.—A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income.

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART I—DETERMINATION OF SOURCES OF INCOME

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SEC. 861. INCOME FROM SOURCES WITHIN THE UNITED STATES.

(a) GROSS INCOME FROM SOURCES WITHIN UNITED STATES.— * * *

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[(e) ELECTION TO TREAT INCOME FROM CERTAIN AIRCRAFT AND VESSELS AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

[(1) IN GENERAL.—For purposes of subsection (a) and section 862(a), if a taxpayer owning an aircraft or vessel which is section 38 property (or would be section 38 property but for section 48(a)(5)) leases such aircraft or vessel to a United States person, other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer, and if such aircraft or vessel is manufactured or constructed in the United States, the taxpayer may elect, for any taxable year ending after the commencement of such lease, to treat all amounts includible in gross income with respect to such aircraft or vessel (whether during or after the period of any such lease), including gain from sale, exchange, or other disposition of such aircraft or vessel, as income from sources within the United States.

[(2) EFFECT OF ELECTION.—An election under paragraph (1) made with respect to any aircraft or vessel shall apply to the taxable year for which made and to all subsequent taxable years. Such election may not be revoked except with the consent of the Secretary.

[(3) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under paragraph (1), and any revocation of such election, shall be made in such manner and at such time as the Secretary or his delegate prescribes by regulations.

[(4) CERTAIN TRANSFERS INVOLVING CARRYOVER BASIS.—If the taxpayer transfers or distributes an aircraft or vessel which is subject to an election under paragraph (1) and the basis of such aircraft or vessel in the hands of the transferee or distributee is determined by reference to its basis in the hands of the transferor or distributor, the transferee or distributee shall, for purposes of paragraph (1), be treated as having made an election with respect to such aircraft or vessel.]

(e) INCOME FROM CERTAIN LEASED AIRCRAFT, VESSELS, AND SPACECRAFT TREATED AS INCOME FROM SOURCES WITHIN THE UNITED STATES.—

(1) IN GENERAL.—For purposes of subsection (a) and section 862(a), if—

(A) a taxpayer owning a craft which is section 38 property (or would be section 38 property but for section 48(a)(5)) leases such craft to a United States person, other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer, and

(B) such craft is manufactured or constructed in the United States,

then all amounts includible in gross income by the taxpayer with respect to such craft for any taxable year ending after the commencement of such lease (whether during or after the period of such lease), including gain from sale, exchange, or other disposition of such craft, shall be treated as income from sources within the United States.

(2) CERTAIN TRANSFERS INVOLVING CARRYOVER BASIS.—If the taxpayer transfers or distributes a craft to which paragraph (1) applied and the basis of such craft in the hands of the transferee or distributee is determined by reference to its basis in the hands of the transferor or distributor, paragraph (1) shall continue to apply to such craft in the hands of the transferee or distributee.

(3) CRAFT DEFINED.—For purposes of this subsection, the term "craft" means a vessel, aircraft, or spacecraft.

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Subtitle B—Estate and Gift Taxes

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CHAPTER 11—ESTATE TAX

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Subchapter A—Estates of Citizens or Residents

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PART III—GROSS ESTATE

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SEC. 2032. ALTERNATE VALUATION.

() General.— * * *

* * * * * * *

(c) Time of Election.—The election provided for in this section shall be exercised by the executor on his return [if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return] *not later than the time such return is filed.*

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PART IV—TAXABLE ESTATE

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SEC. 2055. TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES.

(a) In General.— * * *

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(e) Disallowance of Deductions in Certain Cases.—

(1) No deduction shall be allowed under this section for a transfer to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where an interest in property (other than an interest described in section 170(f)(3)(B) passes or has passed from the decedent to a person, or for a use, described in subsection (a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in subsection (a), no deduction shall be allowed under this section for the interest which passes or has passed to the person, or for the use, described in subsection (a) unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) In the case of a will executed before December 31, 1977, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an inter-

est in property which passes from the decedent to a person, or for a use, described in subsection (a), to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, **[**1978**]** *1980*, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, **[**1978**]** *1980* (which are required to amend or conform the governing instrument), become final, so that the interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed. The Secretary may, by regulation, provide for the application of the provisions of this paragraph to trusts whose governing instruments are amended or conformed in accordance with this paragraph, and such regulations may provide for any adjustments in the application of the provisions of section 508 (relating to specific rules which respect to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations), to such trusts made necessary by the application of this paragraph. If, by the due date for the filing of an estate tax return (including any extension thereof), the interest is in a charitable trust which, upon allowance of a deduction, would be described in section 4947(a)(1), or the interest passes directly to a person or for a use described in subsection (a), a deduction shall be allowed as if the governing instrument was amended or conformed under this paragraph. If the amendment or conformation of the governing instrument is made after the due date for the filing of the estate tax return (including any extension thereof), the deduction shall be allowed upon the filing of a timely claim for credit or refund (as provided for in section 6511) of an overpayment resulting from the application of this paragraph. In the case of a credit or refund as a result of an amendment or conformation made pursuant to this paragraph, no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed.

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SECTION 309 OF THE TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

SEC. 309. TRANSFERS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES.

(a) IN GENERAL.—Clause (iii) of section 170(f)(3)(B) (relating to exceptions from denial of deduction in case of certain contributions of partial interests in property) is amended to read as follows:

"(iii) a lease on, option to purchase, or easement with respect to real property granted in perpetuity to an organization described in subsection (b)(1)(A) exclusively for conservation purposes, or".

(b) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply with respect to contributions or transfers made after June 14, 1977**[**, and before June 14, 1981**]**.

(2) Paragraph (4) of section 2124(e) of the Tax Reform Act of 1976 is amended by striking out "June 14, 1977" and inserting in lieu thereof "June 14, 1981".

SECTION 2124 OF THE TAX REFORM ACT OF 1976

SEC. 2124. TAX INCENTIVES TO ENCOURAGE THE PRESERVATION OF HISTORIC STRUCTURES.

(a) AMORTIZATION OF REHABILITATION EXPENDITURES.— * * *

* * * * * * *

(e) TRANSFERS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES.—

(1) INCOME TAX DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS OF PARTIAL INTERESTS IN PROPERTY FOR CONSERVATION PURPOSES.—Section 170(f)(3) (relating to charitable contributions) is amended— * * *

* * * * * * *

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to contributions or transfers made after June 13, 1976[, and before June 14, 1981].

SECTION 3 OF THE ACT OF OCTOBER 7, 1978

An Act To prohibit the issuance of regulations on the taxation of fringe benefits, and for other purposes.

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SEC. 3. TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFICERS BEFORE JANUARY 1, 1978.

(a) GENERAL RULE.—If—

(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

(3) this section applies to such allowance,

then, for purposes of the Internal Revenue Code of 1954, such allowance shall not be included in such individual's gross income.

(b) ALLOWANCES TO WHICH SECTION APPLIES.—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

(1) after December 31, 1969, and before January 1, [1977] *1974*, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

(2) during the calendar year [1977] *1974, 1975, 1976, or 1977.*

* * * * * * *

VI. ADDITIONAL VIEWS OF THE HONORABLE BARBER B. CONABLE, JR.

When this bill was considered in the full Ways and Means Committee, I moved an amendment which would further reduce taxes by means of cutting individual tax rates by 10% and by increasing depreciation deductions for business taxpayers.

A point of order was made against my amendment and the Chairman sustained it. He stated that my amendment was not in order because matters before the Select Revenue Subcommittee (from which H.R. 7956 was reported) were restricted to those items referred to it by the Chairman and that it was beyond the scope of its jurisdiction because the revenue impact would exceed $100 million. True. However, there is no Committee or House rule which constrains the full Committee from considering anything it desires. Since H.R. 7956 was being considered by the full Committee rather than the Subcommittee, the Chairman's position was simply incorrect.

After what I considered to be a fallacious ruling and a most unfortunate precedent I appealed the Chair's ruling and was defeated on a party-line vote.

The real reason for the Chair's ruling was not parliamentary, it was political. The Chairman, the Democratic leadership in the Congress and the Administration are opposed to a tax cut. Despite the fact that individual taxes are at one of the highest levels in history having risen by $30 billion since 1978 and despite the obvious need for productivity incentives such as liberalize depreciation, they say "wait till next year."

The fact is that if we don't act now, taxes won't be cut on January 1 and, perhaps not at all. In the interim, Social Security taxes will rise by a maximum of $387 on that date and business will be reluctant to invest in new plant and equipment until depreciation reform is completed. As a result, we are facing another year of stagnation and economic uncertainty due to Congress' failure to act in a timely fashion.

It is obvious that these unfortunate consequences are chargeable to the Democratic majority in Congress who refuse to allow a vote on a tax cut. The parliamentary game played on this bill is merely the latest action against lower taxes.

BARBER B. CONABLE, JR.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1279

EMPLOYMENT OF PERSONAL ASSISTANTS FOR HANDICAPPED FEDERAL EMPLOYEES

SEPTEMBER 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mrs. SCHROEDER, from the Committee on Post Office and Civil Service, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7466]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 7466) to amend section 3101 of title 5, United States Code, and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) section 3102 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees

"(a) For the purpose of this section—

"(1) 'agency' means—

"(A) an Executive agency; and

"(B) the Library of Congress;

"(2) 'handicapped employee' means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

"(3) 'nonprofit organization' means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

"(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties and who shall serve without pay from the agency, without regard to—

"(A) the provisions of this title governing appointment in the competitive service;

"(B) chapter 51 and subchapter III of chapter 53 of this title; and

"(C) section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

"(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

"(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

"(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

"(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

"(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

"(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under the statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.".

"(b) The item relating to section 3102 in the analysis of chapter 31 of title 5, United States Code, is amended to read as follows:

"§ 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees.".

(c)(1) Section 604(a)(16)(A) of title 28, United States Code, is amended by striking out "3102" and inserting in lieu thereof "3102(b)".

(2) Section 410(b)(1) of title 39, United States Code, is amended by striking out "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees)," and inserting in lieu thereof "section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees),".

SEC. 2. Section 7(d)(1) of the Federal Advisory Committee Act of 5 U.S.C. App.) is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting "; and" in lieu thereof, and by adding at the end thereof the following new subparagraph:

"(C) such members—

"(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

"(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5), may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committete duties.".

SEC. 3. The amendments made by this Act shall take effect 60 days after the date of the enactment of this Act.

EXPLANATION OF AMENDMENT

The committee amendment substitutes an entirely new text for the text of the introduced bill. The explanation of the provisions of the committee substitute is contained in the explanation of the bill as set forth below in this report.

PURPOSE

The purpose of H.R. 7466 is to amend existing law to permit the employment of personal assistants for handicapped Federal employees both at their regular duty stations and while on travel status, and for other purposes.

COMMITTEE ACTION

H.R. 7466 was introduced on May 29, 1980, by Representative Patricia Schroeder at the request of the Administration. The Subcommittee on Civil Service held a hearing on August 20, 1980 (Serial No. 96-102) and testimony was received from representatives of the Office of Personnel Management, organizations representing handicapped individuals, and interested individuals.

On August 27, 1980, the Committee on Post Office and Civil Service, by voice vote, ordered H.R. 7666, as amended, favorably reported.

STATEMENT

SUMMARY

Under existing law and policy, the Federal Government requires and encourages equal employment opportunity for all citizens, including the physically handicapped. However, the committee believes that the well-intentioned efforts of the past decade have inadvertently shortchanged some handicapped individuals. Consequently, the committee proposes H.R. 7466 as a tool that will enable the Federal machinery to deliver fully on its promises to Federal employees with a wide range of physical handicaps.

In brief, the reported bill authorizes agency heads to hire readers for the blind and interpreters for the deaf, as well as personal assistants for those with other types of physical handicaps. It allows:

- —the use of relatives as personal assistants and it allows volunteer assistants;
- —it also makes necessary changes in provisions relating to travel expenses;
- —it clarifies the distinction between secretarial and clerical support services and the duties of a personal assistant; and
- —clarifies certain time accounting methods for purposes of calculating compliance with personnel ceilings.

An explanation of some items of special interest follows.

LEGISLATIVE BACKGROUND

Two major laws and an administrative ruling have a direct bearing on the need for H.R. 7466. They are the Rehabilitation Act of 1973 (Public Law 93–112), as amended; the Civil Service Reform Act of 1978 (Public Law 95–454); and Comptroller General Ruling B–188710 (September 23, 1977; March 23, 1978).

The Rehabilitation Act firmly establishes a national policy of bringing disabled citizens into the mainstream of American life. In furtherance of that policy, it prohibits discrimination against handicapped individuals on the basis of their handicapping condition and requires each agency of the Federal Government to set up an affirmative action program for hiring and promoting individuals with disabilities.

The basic regulatory guidance to agencies on compliance with the Rehabilitation Act appears at 29 C.F.R. § 1613.701. In pertinent part, the regulations broadly define the term "handicapped person" and require that an agency make "reasonable accommodation" to the limitations of a qualified handicapped applicant or employee.

The committee believes that personal assistants for qualifying handicapped Federal employees are a "reasonable accommodation" within the meaning of the implementing regulations. However, the committee recognizes that while the Civil Service Reform Act of 1978 augmented existing agency authority to hire readers for the blind with new authority to hire interpreters for the deaf, it did not authorize personal assistants for Federal employees who otherwise qualify as "handicapped persons" within the meaning of the Rehabilitation Act regulations. The committee also recognizes that in the absence of specific authorization, a Comptroller General ruling has effectively foreclosed the hiring of personal assistance for Federal employees with handicaps other than blindness or deafness.

STATISTICAL BACKGROUND

According to OPM data, 6.74 percent of the Federal work force report a handicap. Of those reporting a handicap, nearly 12 percent have a "severe disability" as defined by the Equal Employment Opportunity Commission. However, the committee believes that the statistics tell only part of the story; the rest is found in the valuable contribution physically disabled employees are making at the Veterans Administration and the three military departments (which have the highest number of physically disabled) and at many other Federal agencies.

Given this legislative and statistical background, the committee believes that H.R. 7466 will accomplish three things: first, it will enhance employment opportunities for persons with a wide range of physical handicaps; second, it will provide Federal managers with a tool to meet the requirements of the Rehabilitation Act; and third, it will complement a large body of legislation designed to provide equal employment opportunity for all citizens.

"REASONABLE ACCOMMODATION"

The committee agrees with the Administration that hiring personal assistants for qualifying handicapped Federal employees is a "reasonable accommodation" within the meaning to the Rehabilitation Act.

The committee also agrees that the use of readers and interpreters for the blind and deaf employees has been effective and that extending similar authority to hire personal assistants for Federal employees with other physical handicaps should also prove to be effective.

Consequently, the reported bill revises section 3102 of title 5 in its entirety. It substitutes a comprehensive definition of "handicapped employee" that includes an individual who is blind or deaf as well as one who otherwise qualifies as a handicapped individual within the meaning of the Rehabilitation Act. The committee intends no diminution of efforts to assist the blind or deaf with this change in definition. Instead, it believes the more comprehensive definition will clarify the Federal Government's commitment to all persons with physical handicaps.

ADVISORY COMMITTEES

H.R. 7466, as introduced, also extended the availability of personal assistants to members, staffs and consultants of advisory committees who are "handicapped individuals" within the meaning of the applicable definition.

The committee believes that since consultants are retained on a contractual basis, the better approach is to leave arrangements for personal assistants to the terms of the contracts negotiated between handicapped consultants and advisory committees. The committee also believes that it would be inappropriate for the Government to assign a personal assistant who would be bound by Government employment and travel regulations to a consultant who would not be bound by those regulations. Consequently, the reported bill retains language of the introduced bill authorizing personal assistants for advisory committee members and staff members, but deletes language of the introduced bill relating to similar authorization for handicapped advisory committee consultants.

VOLUNTEER ASSISTANTS

The committee agrees with the Administration that flexibility is an important element of the "mainstreaming" effort. Consequently, the reported bill not only authorizes regular civil service employment of personal assistants for handicapped employees, but also authorizes volunteer personal assistants who serve without pay from the agency. It also provides that volunteer personal assistants may be paid for their services by the handicapped employee or by a nonprofit organization. In addition, H.R. 7466 allows the use of a relative as a personal assistant. The Office of Personnel Management has assured the committee that the anti-nepotism laws pose no obstacle to the use of a spouse or child as a personal assistant.

The committee believes that these provisions provide a flexibility not usually associated with the Federal bureaucracy. It encourages agencies and handicapped employees to cooperate and experiment in reaching the best possible solutions.

SECRETARIAL ASSISTANCE

H.R. 7466, as reported, retains existing language of section 3102 of title 5 which states that "[t]his section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee * * * of clerical or secretarial assistance.

The committee includes this language to emphasize that nothing in the reported legislation is intended to supplant the regular clerical and secretarial support provided to a handicapped employee who has a personal assistant. Although the committee recognizes that secretarial or clerical employees can be assigned the duties of a personal assistant, it emphasizes that these duties are in addition to their ordinary duties.

TRAVEL

The committee agrees with the Administration that authorizing payment of travel-related expenses for personal assistants is a logical step toward enabling physically handicapped employees to fulfill certain job requirements. Consequently, the reported bill provides that personal assistants can be paid travel, per diem, and other expenses in accordance with applicable Government regulations when accompanying or assisting a handicapped person on authorized work-related travel.

PERSONNEL CEILINGS

The committee believes that personal assistants hired pursuant to the provisions of H.R. 7466 should not count against agency personnel ceilings established by law or regulation. Specifically, the committee believes that only that portion of an employee's time spent performing the duties of a personal assistant should be used to determine the prorated portion of employee time counted for purposes of staying within the applicable agency personnel ceilings. In addition, accounting for time in this way is consistent with the Administration's new policy of using "full-time equivalency" to count personnel for ceiling purposes.

SECTION ANALYSIS

The committee amendment to H.R. 7466 strikes all after the enacting clause and inserts an entirely new text. The provisions of the committee amendment are explained below.

FIRST SECTION

The first section revises section 3102 of title 5, United States Code, in its entirety. Existing section 3102 provides the authority to employ reading assistants for blind employees and interpreting assistants for deaf employees. The section is revised to expand this authority to permit the employment of personal assistants for other handicapped employees. The committee notes that section 3102 as revised by the bill contains certain clerical and stylistic revisions which are not intended as substantive changes in existing law. Those substantive changes which are intended are discussed herein.

Subsection (a) of revised section 3102 restates existing law with two exceptions. First, coverage for the District of Columbia has been deleted in anticipation of the District's independent personnel system taking effect. Second, the definitions of "blind employee" and "deaf employee" are replaced by the definition in subsection (a)(2) of "handicapped employee". Subsection (a)(2) defines a "handicapped employee" as an individual who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

Section 3102(b)(1) authorizes the employment of volunteer personal assistants. It provides that the head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee to perform the employee's official duties, and who shall serve without pay from the agency. It further provides that employment of volunteer personal assistants shall be without regard to (A) the provisions of title 5 governing the appointment in the competitive services, (B) the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to position classification and pay, and (C) section 3679 of the Revised Statutes (31 U.S.C. 665(b)) which generally prohibits the acceptance by an agency head of voluntary service. The last sentence of subsection (b)(1) provides that the authorized employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

Subsection (b)(2) permits a volunteer personal assistant, including a reading assistant or interpreting assistant, employed under subsection (b) to receive pay for services performed from the handicapped employee or a nonprofit organization, notwithstanding the prohibition against a Government employee accepting compensation for Government service from a source other than the Government (18 U.S.C. 209).

Section 3102(c) authorizes regular civil service employment of personal assistants for handicapped employees. It provides that the head of each agency may employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties. This employment may include the employment of a reading assistant or assistants for a blind employee, and an interpreting assistant or assistants for a deaf employee. Provisions in existing law (5 U.S.C. 3102(d)) which provide that such employment is subject to section 209 of title 18, and chapter 51 and subchapter III of chapter 53 are omitted as unnecessary. Those provisions relating to civil service employment are applicable to civil service employment unless specifically made inapplicable as is the case under revised 3102 (b) relating to employment of volunteer personal assistants.

Section 3102(d) authorizes payment to individuals accompanying or assisting handicapped employees traveling on official business. Paragraph (1) provides that in the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee. The payment may be for all or a portion of the travel period involved, and may be made either directly to the individual or by advancement or reimbursement to the handicapped employee. Paragraph (2) limits the amounts which may be paid and provides that the amount paid to an individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed the amounts (including pay, and if appropriate, travel expenses and per diem allowances) which could be paid to a Federal employee assigned to accompany the handicapped employee. A provision in the introduced bill which authorized payment of travel and per diem to a Federal employee assigned to accompany or assist a handicapped employee was deleted as unnecessary since such an employee would be performing official duties and would therefore be entitled to travel and per diem under existing law. Subparagraph (B) of section 3102(d)(2) provides that an individual accompanying or assisting a handicapped employee shall be considered a Federal employee, but only for purposes of chapter 81 of title 5 (relating to compensation for injury) and section 2671 through 2680 of title 28 (relating to tort claims).

Section 3102(e) restates without substantive change existing section 3102(c).

Subsection (b) of the first section amends the analysis of chapter 31 of title 5 to reflect the revision of section 3102. Subsection (c) of the first section makes conforming amendments to section 604(a)(16)(A) of title 28, United States Code, and section 410(b) of title 39, United States Code.

SECTION 2

Section 2 amends section 7(d)(1) of the Federal Advisory Committee Act (5 U.S.C. App.) by adding a new subparagraph (C) which provides that members of advisory committees and of staffs of advisory committees (i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)) and (ii) who do not otherwise qualify under section 3102 of title 5 (as amended by the bill) by reason of being an employee of an agency, may be provided services pursuant to section 3102 of title 5 while in the performance of their advisory committee duties.

SECTION 3

Section 3 provides that the amendments made by the Act shall take effect 60 days after the date of enactment.

COST

By letter of August 28, 1980, the committee requested a cost estimate on H.R. 7466 from the Congressional Budget Office. That cost estimate was not received in time to include with this report. The committee estimates that the enactment of this legislation will result in no significant additional cost to the Government.

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Civil Service is vested with legislation and oversight jurisdiction over the subject matter of H.R. 7466. As a result of the hearing on this legislation, the subcommittee concluded that there was ample justification for amending the law in the manner provided under H.R. 7466.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of House rule XI, the committee has concluded that the enactment of H.R. 7466 will have no inflationary impact on the national economy.

ADMINISTRATIVE VIEWS

Set forth below is the communication from the Office of Personnel Management transmitting the proposed legislation.

OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., May 8, 1980.

Hon. THOMAS P. O'NEILL, Jr.
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Submitted herewith is a draft bill to amend Section 3102 of title 5, United States Code and section 7 of the Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status.

This legislation would extend a right which currently exists for blind and deaf employees to all physically handicapped employees. It will permit the effective utilization of the services and talents of many severely physically handicapped Federal employees and will enhance the Government's role as a model employer of handicapped individuals.

The use of readers and interpreters for blind and deaf employees has proven to be a successful program. Extending similar authority for employees with other physical handicaps should prove to be equally effective.

The Office of Management and Budget advises that there is no objection to the submission of this draft legislation and that its enactment would be consistent with the Administration's objectives.

The same letter is being sent to the President of the Senate.

Sincerely yours,

ALAN K. CAMPBELL,
Director.

Enclosures.

A BILL To amend Section 3102 of title 5, United States Code and section 7 of the Federal Advisory Committee Act to permit the employment of personal assistants for handicapped Federal employees both at their regular duty station and while on travel status

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled, That section 3102 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) (1) For the purposes of this title, a 'handicapped employee' is an employee of the Federal Government who is also a 'handicapped individual' as defined in section 706 of title 29.

"(2) The head of each agency may employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter III of chapter 53 of this title governing classification and pay, personal assistants essential and necessary in order that a handicapped employee may perform his official duties. The employment of such assistance shall be subject to such regulations as shall be promulgated by the Office of Personnel Management.

"(3) Personal assistants shall be available to perform other duties as designated by the head of the agency in addition to responsibilities under this section.

"(f) When the head of an agency determines that it is in the Government's interest that a handicapped employee travel in order to perform a Government function, the head of the agency may authorize—

(1) the payment of travel expenses and per diem to another Federal employee to accompany the handicapped employee during the authorized travel period; or

"(2) the issuance of travel orders to the handicapped employee which provide for the payment, either directly or by reimbursement, for the personal services of an individual to accompany the handicapped employee during the authorized travel period. Payment for such personal services shall not exceed the amount which could be paid to a Federal employee, assigned to perform such services, in compensation, travel expenses, and per diem. Such a personal assistant shall not be considered a Federal employee for any purposes other than for the purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims)."

FEDERAL ADVISORY COMMITTEE ACT PROVISIONS FOR PERSONAL ASSISTANTS

SEC. 2. Section 7 of the Federal Advisory Committee Act is amended by inserting therein the following new subsection (d) (3):

"(d) (3) Members, staffs, and consultants of advisory committees who are 'handicapped individuals' as defined in section 706 of title 29, United States Code, when performing advisory committee duties, may be provided the services of a personal assistant pursuant to the provisions of subsections 3102(e) and (f) of title 5.

EFFECTIVE DATE

SEC. 3. The provisions of this Act shall take effect sixty days after the date of the enactment of this Act.

SECTION ANALYSIS

The bill would amend section 3102 of ttile 5, United States Code, by adding new subsections (e) and (f) and section 7 of the Federal Advisory Committee Act by adding a new subsection (d) (3).

Section 1 of the bill amends section 3102 of title 5.

Subsection (e) consists of three paragraphs that would authorize the employment of personal assistants for handicapped employees. Paragraph (1) defines "handicapped employees."

Paragraph (2) authorizes the employment of individuals to work as personal assistants to handicapped employees. This paragraph is similar to existing provisions of law which allow the employment of individuals as readers and interpreters for blind and deaf employees.

Paragraph (3) clarifies tthe previous paragraph by authorizing personal assistants to perform additional work. It is unlikely that any employee would devote his or her entire work day to providing such services.

Section (f) consists of two paragraphs which authorize the payment of travel, per diem, and salary for personal assistants who provide service to handicapped employees on travel status.

Subsection (1) provides for such payment to Government employees.

Subsection (2) provides for payment for services rendered by nongovernment employees. This payment can be made directly or by reimbursement to the handicapped employee who has travel orders which authorize personal assistants.

Section 2 of the bill provides the same provision as section 1 for personal assistants for members, staffs, and consultants to advisory committees.

STATEMENT OF PURPOSE AND JUSTIFICATION OF A DRAFT BILL TO AMEND SECTION 3102 OF TITLE 5 UNITED STATES CODE AND SECTION 7 OF THE FEDERAL ADVISORY COMMITTEE ACT

The purpose of this legislation is to increase employment opportunities for the physically handicapped by permitting the Government to pay for personal assistants for such employees. The legislation also authorizes compensation for personal assistants for advisory committee members, staffs, and consultants.

Under existing law agencies are authorized to employ or assign employees as readers for the blind and interpreters for the deaf. However, Congress has not enacted legislation that provides for similar assistance for other handicapped employees. As a result, the Comptroller General of the United States has ruled (B–188710) that agencies may not authorize reimbursement of compensation for attendants of handicapped employees.

This legislation would end a system of treating the needs of handicapped employees differently depending on the nature of the handicap. This legislation would provide for Government-wide authorization for the employment of personal assistants for all handicapped employees requiring such assistants. The bill also provides authorization for personal assistants to be paid from Government funds for services provided to a handicapped employee in travel status.

This legislation is consistent with a large body of legislation designed to provide equal employment opportunities to all, including disabled individuals.

Passage of this bill will provide the Government with several benefits. First, it will permit the effective utilization of the services and talents of all employees, not just those without physical handicaps.

Second, it will continue to demonstrate the Government's role as a model employer of the physically handicapped. Third, the provisions of this bill will provide an additional incentive for handicapped individuals to contribute actively to society and to provide their own economic support.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

SEC.

3101. General authority to employ.
[3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees.]
3102. Employment of personal assistants for handicapped employees, including blind and deaf employees.
3103. Employment at seat of Government only for services rendered.
3104. Employment of specially qualified scientific and professional personnel.
3105. Appointment of administrative law judges.
3106. Employment of attorneys; restrictions.
3107. Employment of publicity experts; restrictions.
3108. Employment of detective agencies; restrictions.
3109. Employment of experts and consultants; temporary or intermittent.
3110. Employment of relatives; restrictions.
3111. Acceptance of volunteer service.
3112. Disabled veterans; noncompetitive appointment.

* * * * * * *

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

* * * * * * *

[§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees

[(a) For the purpose of this section—

[(1) "agency" means—

[(A) An Executive agency;

[(B) the Library of Congress; and

[(C) the government of the District of Columbia;

[(2) "head of each agency" means the Mayor of the District of Columbia with respect to the government of the District of Columbia;

[(3) "blind employee' means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned and under regulations of the head of that agency, that he has an impairment of sight, either permanent or temporary, which is so severe or disabling that the employment of a reading assistant or assistants for that individual is necessary or desirable to enable him properly to perform his work;

[(4) "deaf employee" means an individual employed by an agency who, in accordance with regulations prescribed by the head agency who establishes, to the satisfaction of the appropriate authority of the agency concerned that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and

[(5) "nonprofit organization" means an organization determinded by the Secretary of the Treasury to be an organization described by section 501(c) of title 26 which is exempt from taxation under section 501(a) of title 26.

[(b) The head of each agency may employ a reading assistant or assistants for a blind employee and interpreting assistant or assistants for a deaf employee of his agency, to serve without pay from the agency, without regard to—

[(1) the provisions of this title governing appointment in the competitive service; and

[(2) chapter 51 and subchapter III of chapter 53 of this title.

A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 or title 18.

[(c) This section may not be held or considered to prevent or limit in any way the assignment to a blind or deaf employee by an agency of clerical or secretarial assistance, at the expense of the agency and under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided in that manner under currently applicable statutes and regulations.

[(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter III of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.]

§3102. Employment of personal assistants for handicapped employees, including blind and deaf employees

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency; and

(B) the Library of Congress;

(2) "handicapped employee" means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a

handicapped individual within the meaning of section 501 of Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) "nonprofit organization" means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties and who shall serve without pay from the agency, without regard to—

(A) the provisions of this title governing appointment in the competitive service;

(B) chapter 51 and subchapter III of chapter 53 of this title; and

(C) section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the empolyee's official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations

currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.

* * * * * * *

SECTION 604 OF TITLE 28, UNITED STATES CODE

§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

(1) Supervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts;

(2) Examine the state of the dockets of the courts; secure information as to the courts' need of assistance; prepare and transmit quarterly to the chief judges of the circuits, statistical data and reports as to the business of the courts;

(3) Submit to the annual meeting of the Judicial Conference of the United States, at least two weeks prior thereto, a report of the activities of the Administrative Office and the state of the business of the courts, together with the statistical data submitted to the chief judges of the circuits under paragraph (a)(2) of this section, and the Director's recommendations, which report, data and recommendations shall be public documents;

(4) Submit to Congress and the Attorney General copies of the report, data and recommendations required by paragraph (a)(3) of this section;

(5) Fix the compensation of clerks of court, deputies, librarians, criers, messengers, law clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law;

(6) Determine and pay necessary office expenses of courts, judges, and those court officials whose expenses are by law allowable, and the lawful fees of United States Commissioners;

(7) Regulate and pay annuities to widows and surviving dependent children of justices and judges of the United States, Directors of the Federal Judical Center, and Directors of the Administrative Office, and necessary travel and subsistence expenses incurred by judges, court officers and employees, and the officers and employees of the Administrative Office, and the Federal Judicial Center, while absent from their official stations on official business;

(8) Disburse, directly or through the several United States marshals, moneys appropriated for the maintenance and operation of the courts;

(9) Establish pretrial services agencies pursuant to section 3152 of title 18, United States Code;

(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph

(17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services for pretrial services, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);

(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the pretrial service agencies, and their clerical and administrative personnel;

(12) Provide accommodations for the courts, the Federal Judicial Center, the pretrial services agencies and their clerical and administrative personnel;

(13) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the courts of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

(16) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102(*b*) of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;

(17) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.

* * * * * * *

SECTION 410 OF TITLE 39, UNITED STATES CODE

§ 410. Application of other laws

(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

(b) The following provisions apply to the Postal Service:

(1) section 552 (public information), section 552a (records about individuals), section 552b (open meetings), [3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees)] *section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees*, section 3110 (restrictions on employment of relatives), section 3333 and chapters 72 (antidiscrimination; right to petition Congress) and 73 (suitability, security and conduct of employees), section 5520 (withholding city income or employment taxes), and section 5532 (dual pay) of title 5, except that no regulation issued under such chapters or sections shall apply to the Postal Service unless expressly made applicable;

(2) all provisions of title 18 dealing with the Postal Service, the mails, and officers or employees of the Government of the United States;

(3) section 107 of title 20 (known as the Randolph-Sheppard Act, relating to vending machines operated by the blind);

(4) the following provisions of title 40:

(A) sections 258a–258e (relating to condemnation proceedings);

(B) section 270a–270e (known as the Miller Act, relating to performance bonds);

(C) sections 276a–276a–7 (known as the Davis-Bacon Act, relating to prevailing wages);

(D) section 276c (relating to wage payments of certain contractors);

(E) chapter 5 (the Contract Work Hours Standards Act); and

(F) chapter 15 (the Government Losses in Shipment Act);

(5) the following provisions of title 41:

(A) section 35–45 (known as the Walsh-Healy Act, relating to wages and hours); and

(B) chapter 6 (the Service Contract Act of 1965); and

(6) section 2000d, 2000d–1—2000d–4 of title 42 (title VI, the Civil Rights Act of 1964);

(7) section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668); and

(8) the provisions of the Act of August 12, 1968 (42 U.S.C. 4151–4156).

* * * * * * *

SECTION 7 OF THE FEDERAL ADVISORY COMMITTEE ACT

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 7. (a) * * *

* * * * * * *

(d)(1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code; [and]

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; *and*

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102 (a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their adivsory committee duties.

* * * * * * *

ADDITIONAL VIEWS OF THE HONORABLE JIM LEACH

I wholeheartedly endorse the provisions of H.R. 7466, which will permit the employment of personal assistants for handicapped employees at their regular duty stations as well as when on travel status.

The government, if it is to fulfill its role as a model employer must make good its intentions to usefully employ the skills and services of the Nation's handicapped.

It should be made clear, in this regard, that it is the intent of the committee members actively involved in this legislation that the additional hires authorized by H.R. 7466 should not be charged against any agency's personnel ceiling. As the author of an amendment to the Civil Service Reform Act of 1978 (Public Law 95–454) which called for a government-wide limit on the size of the civilian workforce, I would like to emphasize that limitations of this nature, imposed by the Congress and administered by the executive branch, should not prejudice programs such as that provided by this legislation.

I urge my colleagues in the House to lend H.R. 7466 their unreserved support.

JIM LEACH.

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1280

FEDERAL EMPLOYEES' GROUP LIFE INSURANCE ACT OF 1980

September 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. Spellman, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 7666]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 7666) to amend chapter 87 of tite 5, United States Code, to increase the amounts of regular and optional group life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

Explanation of Amendment

The committee amendment substitutes an entirely new text for the text of the introduced bill. The explanation of the provisions of the committee substitute is contained in the explanation of the bill as set forth below in this report.

Purpose

The purpose of H.R. 7666, as amended, is to amend provisions of law relating to the Federal employees' group life insurance (FEGLI) program to increase amounts of regular and optional group life insurance available to Federal employees, to provide optional life insurance on family members, and to revise the reduction in the life insurance of an annuitant.

Committee Action

H.R. 7666 was introduced on June 25, 1980, by Representative Gladys Noon Spellman. Earlier in the 96th Congress, Representative

Spellman had introduced H.R. 1265, a similar bill, and at the request of the Administration, H.R. 3448. The Subcommittee on Compensation and Employee Benefits held a hearing on H.R. 1265 and H.R. 3448 on June 12, 1979 (Serial No. 96–23), and testimony was received from representatives of the Office of Personnel Management, Metropolitan Life Insurance Company, the prime insurer involved in the FEGLI program, and organizations representing active and retired Federal employees. Earlier, during the 95th Congress, the subcommittee held hearings on the FEGLI program (Serial No. 95–59).

On August 27, 1980, the Committee on Post Office and Civil Service, by a voice vote, ordered H.R. 7666, as amended, favorably reported.

STATEMENT

THE PRESENT LIFE INSURANCE PROGRAM

The group life insurance available for almost all Federal employees was created by the Federal Employees' Group Life Insurance Act of 1954, Public Law 85–598. At the time the program was authorized, it represented a model of progressive fringe benefit legislation; many employers in the private sector of the economy at that time offered no life insurance protection. The new Federal program offered employees life insurance, plus an equal amount of accidental death or dismemberment insurance in an amount equal to their annual rate of pay, rounded off to the next higher thousand dollars, up to a maximum of $20,000. The cost of the insurance would be paid jointly: the employee paid two-thirds and his employing agency paid one-third.

An unusual feature of the 1954 act was the provision authorizing an employee to continue his insurance after retirement. Under most industry plans in effect at that time, insurance lapsed when an employee was separated from his position. Under the Federal program, however, an employee who retired on an immediate annuity could continue his insurance, without payment. Upon reaching age 65, the amount of the insurance began to decline each month at the rate of 2 percent of the original face value of the policy until 25 percent of the original value remained—38 months after the reduction began.

The life insurance program remained virtually unchanged until 1967 when in Public Law 90-206, Congress increased the maximum amount of insurance, increased the basic coverage, and created a new optional policy. The maximum was increased from $20,000 to an amount equal to the rate of pay for Level II of the Executive Salary Schedule, as that Schedule is periodically revised. The basic policy was revised to provide a minimum of $10,000 insurance and to add $2,000 to the otherwise applicable amount of insurance. The optional policy of $10,000, paid for entirely by the employee, could be carried into retirement along with the basic insurance, subject to the same reduction in value after age 65.

PROBLEMS IN THE INSURANCE PROGRAM

No other changes in the insurance program have been enacted. What was for its time a progressive and popular fringe benefit program has become less attractive as time has passed. This is particularly true in the case of younger employees, for whom the cost of the program is considered unduly expensive. When the life insurance program began in 1955, about 98 percent of all eligible employees enrolled in the program. Since that time, enrollment has gradually declined to 87 percent. For the optional policy, only 33 percent of employees select coverage.

The committee has identified two basic problems in the Federal employees' group life insurance program which cause many employees, particularly those under 35 years of age, to decline the insurance.

First, the amount of insurance is relatively small. Basic coverage, equal to annual salary, rounded, plus $2,000, is less than insurance generally available from major employers in the private sector of the economy. It is not unusual in the private sector for employers to offer an employee insurance equal to several times the amount of his annual pay. The Federal program is limited to salary, plus $2,000. The Federal who is a classified employee, GS-7, step 4, is eligible for only a basic $18,000 insurance policy.

A second problem is that the insurance is relatively expensive compared to insurance available in the private sector. The only reason for this high cost is that the insurance may be continued after retirement without cost to the employee and a minimum death benefit is payable to the retired employee's beneficiary. This guaranteed payment causes the cost of the Federal insurance policy to be about twice the cost of ordinary term insurance. Although this costly feature makes the insurance attractive to older employees, younger employees, who are not considering retirement, frequently decline coverage and purchase term insurance in the private sector at lower cost. The Federal program suffers because of the actuarial experience which younger employees would contribute to the overall system.

COMMITTEE RECOMMENDATIONS

The committee recommends three basic changes in the Federal employees' group life insurance program:

First, the committee recommends that the amount of basic life insurance available for each eligible employee be increased. The increase would be graduated according to age. Employees less than 36 years of age would be eligible for a basic life insurance policy equal to two times the amount of insurance available under existing law: that is, annual salary rounded to the next higher thousand dollars, plus $2,000, multiplied by 2. For each year of age between 36 and 45, the multiplication factor for the amount of insurance would decline by one tenth each year. The following table illustrates this increase in the basic coverage:

If the age of the employee is:	The appropriate factor is:
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0

The increase in cost incurred by this proposal would be borne entirely by the Government.

The second proposed change would permit employees to purchase additional life insurance, the full cost of which would be paid by the employee. This additional optional insurance, excluding accidental death and dismemberment, would be available in multiples of up to five times the annual pay of the employee, subject to the current limit of five times the rate in effect for level II of the Executive Schedule.

The combination of these two proposed changes in the life insurance program will very substantially enhance the appeal of the life insurance program to all employees, and particularly younger employees. For example, a Federal employee, at GS-7, step 4, currently earns $15,317, a salary which when rounded to the next higher thousand, plus $2,000, entitles him to $18,000 in life insurance. Under the committee amendment, this employee under age 36 would have his basic life insurance doubled to $36,000, would be permitted to purchase an optional life insurance policy (under existing law) of $10,000, and (under the committee amendment) an additional life insurance policy in mulitiples of $16,000 (his annual salary rounded to the next higher thousand), up to $80,000.

The committee amendment would also permit an employee to purchase a life insurance policy of $5,000 for a spouse and $2,500 for each child.

The third committee recommendation changes the reduction in life insurance which occurs after retirement. Under existing law, the face value of the policy continues in full effect until the retired employee reaches age 65. Thereafter, the value of the policy declines at the rate of 2% each month until 25% of the original face value remains. Under the committee amendment, a retired employee could elect to pay an additional amount in order to preserve the face value of his life insurance at the original amount, or to change the reduction factor from 2% each month to 1% each month.

SECTION ANALYSIS

SECTION 1

Short title

Section 1 of the bill provides that the Act may be cited as the "Federal Employees' Group Life Insurance Act of 1980".

SECTION 2

Regular group life insurance payments

Subsection (a) of section 2 amends section 8701 of title 5, United States Code, by adding a new subsection (c) at the end of that section. The new subsection (c) defines the term "basic insurance amount" for the purpose of chapter 87 of title 5. The term "basic insurance amount" means an amount equal to the greater of (1) the employee's annual rate of pay, rounded to the next higher multiple of $1,000, plus $2,000, or (2) $10,000. However, the basic insurance amount may not exceed the annual rate of pay which is payable for positions at level II of the Executive Schedule (currently $68,662.50), rounded to the next higher multiple of $1,000, plus $2,000.

In the case of a former employee who is entitled to continuation of life insurance coverage, the term "basic insurance amount" means the amount of insurance applicable to the employee at the time the employee's insurance stops pursuant to section 8706(a) of title 5.

Subsection (b) of section 2 amends section 8704(a) of title 5, relating to the amounts of group life insurance to which employees are entitled. Under section 8704(a), an employee who otherwise is eligible for group life insurance coverage is entitled to be insured for an amount equal to the employee's basic insurance amount multiplied by a factor determined on the basis of the employee's age. For an employee age 35 or under the amount of insurance is 2.0 times the employee's basic insurance amount. For each year of age in excess of 35 the factor is reduced by .1 until age 45. For age 45 and over the factor is 1.0, and the employee is entitled only to the basic insurance amount.

Subsection (c) of section 2 makes several technical conforming amendments to section 8704(b) of title 5, relating to group accidental death and dismemberment insurance. The accidental death and dismemberment insurance is limited to the employee's basic insurance amount and does not include the additional age-adjusted amounts provided under section 8704(a), discussed immediately above.

Subsection (d) of section 2 amends the last sentence of section 8704(c) to provide that premium pay which is payable to Federal law enforcement officers under section 5545(c)(2) of title 5 shall be included as a part of annual pay for the purpose of chapter 87 of title 5. Such premium pay now is included in basic pay for civil service retirement annuity computation purposes.

Subsection (f) of section 2 provides that the amendments made by subsection (b) and (c) of section 2 shall take effect at the beginning of the first pay period which begins on or after October 1, 1981.

SECTION 3

Continuation of regular group life insurance

Section 3 of the bill amends section 8706(b) of title 5, relating to the continuation of regular group life insurance in the case of employees who retire or become entitled to workmen's compensation. Under existing law, the full amount of life insurance of an employee who retires on an immediate annuity or becomes entitled to compensation for work-related disease or injury is continued in force, without cost to the employee, until age 65. After the employee reaches age 65, the amount of insurance is reduced by 2 percent each month until the reduction reaches 25 percent of the face value.

Under the amended section 8706(b), employees who are eligible for continuation of life insurance coverage will be required to file a written election at the time their eligibility arises. An employee may elect to have the normal deductions required by section 8707 of title 5 withheld from annuity or compensation until the employee reaches age 65, and the employee's insurance will be reduced each month by 2 percent until 25 percent of the original amount remains. The reduction commences after the employee becomes 65 years of age.

If an employee desires greater insurance protection after retirement, the employee may elect to have additional amounts (determined by the Office of Personnel Management) withheld from annuity or compensation. If the employee so elects, the employee's insurance will be either continued without reduction or will be reduced each month by no more than 1 percent until no less than 50 percent of the original amount remains as permanent protection. Under this election, the deductions will continue to be made after the employee reaches age 65.

An employee who elects to have additional amounts withheld for greater insurance protection may later cancel such election and the employee's insurance coverage will continue as if the employee had originally elected to have only the normal amounts withheld under section 8707 of title 5.

SECTION 4

Employee deductions and withholding

Section 4 of the bill amends section 8707 of title 5, relating to withholdings from pay or annuity.

Subsection (a) of section 8707 states that there shall be withheld from the employee's pay a share of the cost of the group life insurance and accidental death and dismemberment insurance.

Subsection (b)(1) provides that whenever life insurance continues after an employee retires or while the employee is receiving compensation for work-related disease or injury, as provided in section 8706(b), deductions for insurance shall be withheld from the employee's annuity or compensation, except that if the employee has elected continuation of coverage under section 8706(b)(3)(A), the deductions shall not be made for months after the calendar month in which the employee becomes 65 years of age.

Subsection (b)(2) of section 8707 states that notwithstanding subsection (b)(1), insurance shall be continued without cost to each employee who retires, or commences receiving workmen's compensation, on or before December 31, 1989. Thus, the existing law (i.e. continuation of life insurance without cost to the employee) is preserved for employees who retire on or before such date. However, this savings provision does not apply to an employee who elects continuation of life insurance under section 8706(b)(3)(B).

Subsection (c) of section 8707 provides that the amount withheld from pay, annuity, or compensation shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost for each $1,000 of the employee's basic insurance amount. As explained earlier in this report, the basic insurance amount does not include the additional age-adjusted amounts provided under section 8704(a).

Section 8707(d) authorizes Federal agencies to waive retroactive collection of regular insurance deductions when the proper amounts have not been deducted from salary or retirement benefits through no fault of the insured individual. However, while the employee or annuitant may be excused from paying retroactive deductions, the erring agency would still be required to submit the amount due to the Office of Personnel Management for deposit to the Employees' Life Insurance Fund.

SECTION 5

Preemption of State or local law

Section 5 of the bill amends section 8709 of title 5 by adding a new subsection (d) at the end thereof. The new subsection (d) exempts the Federal Employees' Group Life Insurance Program from any State or local law or regulation pertaining to the nature or extent of group life insurance coverage or benefits to the extent that such law or regulation conflicts with the provisions of any contract made under the FEGLI law. A similar provision was inserted in the Federal Employees Health Benefits law by Public Law 95–368 approved September 17, 1978. The provision for preemption of State and local group life insurance law is deemed advisable to eliminate all possibility of a conflict between sections 7 and 8 of this bill, increasing levels of optional group life insurance available to employees, and any provision of State law limiting the amount of insurance which may be provided under a group insurance contract to citizens of the State.

SECTION 6

Continuation of regular optional insurance

Subsection (a) of section 6 of the bill amends section 8714a(c)(2)(C), relating to continuation of regular optional life insurance after retirement or while in receipt of workmen's compensation. The amended subparagraph (C) specifically provides that the optional life insurance shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes age 65. The Office of Personnel Management is required to prescribe minimum amounts, not less than 25 percent, to which the insurance may be reduced.

Subsection (b) of section 6 amends section 8714a(d) of title 5 to provide discretionary authority for Federal agencies to waive retroactive collection of optional insurance deductions. This provision corresponds to the authority provided under section 8707(d), as amended by section 4 of the bill, with respect to regular group life insurance deductions.

SECTION 7

ADDITIONAL OPTIONAL LIFE INSURANCE

Section 7 of the bill amends chapter 87 of title 5, United States Code, by inserting a new section 8714b after section 8714a. The new section 8714b, entitled "Additional optional life insurance", authorizes the Office of Personnel Management to purchase a policy which shall make available to each employee who is insured under section 8702 of title 5 amounts of additional optional life insurance (without accidental death and dismemberment insurance). An employee may elect to purchase the additional optional life insurance without regard to whether the employee has elected the optional insurance provided under section 8714a of title 5.

Subsection (b) of the new section 8714b provides that the additional optional insurance shall be made available to each eligible employee who has elected coverage in multiples of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee, subject to a maximum limitation of 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule. Subsection (b) further provides that an employee may reduce or stop coverage under this section at any time.

Subsection (c)(1) of section 8714b provides that the additional optional insurance shall stop on separation from service, 12 months after discontinuance of pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy.

Subsection (c)(2) provides for continuation of additional optional insurance in the case of an employee who retires on an immediate annuity or becomes entitled to receive compensation for work-related disease or injury. The amount of insurance continued under this provision is reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age. The reduction will continue for 50 months at which time the insurance stops.

Subsection (d)(1) provides that the full cost of the additional optional insurance shall be withheld from the employee's pay. When the additional optional insurance is continued, as provided under subsection (c)(2), the full cost thereof shall be withheld from the former employee's annuity or compensation, except that the insurance shall be continued without cost to the former employee after the former employee reaches age 65.

Subsection (d)(2) provides discretionary authority for agencies to waive retroactive collection of additional optional insurance deductions. However, the agencies are required to submit the full uncollected amount to the Office of Personnel Management for deposit to the Employees' Life Insurance Fund.

Subsection (e) of section 8714b provides that the cost of the additional optional insurance shall be determined by the Office of Personnel Management on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of title 5.

Subsection (f) provides that the amount of additional optional life insurance in force on the date of an employee's death shall be paid in accordance with section 8705 of title 5.

SECTION 8

Optional life insurance on family members

Section 8 of the bill amends chapter 87 of title 5 by inserting a new section 8714c after the new section 8714b. The new section 8714c, entitled "Optional life insurance on family members", authorizes the Office of Personnel Management to purchase a policy which shall make available to each employee who is insured under section 8702 of title 5 amounts of optional life insurance on the employee's family members.

Subsection (b) of section 8714c provides that the insurance on family members shall be made available to each eligible employee who elects coverage in the amount of $5,000 for a spouse and $2,500 for each child described in section 8701(d). An employee may cancel coverage under this section at any time.

Subsection (c)(1) of section 8714c provides that the insurance on family members shall stop at the earlier of the employee's death, the employee's separation from service, 12 months after discontinuance of pay, or the employee's entry on active duty or active duty for training, subject to a 31-day temporary extension of coverage and for conversion to individual policies.

Subsection (c)(2) provides for continuation of insurance on family members in the case of an employee who retires on an immediate annuity or becomes entitled to receive compensation for work-related disease or injury under the same conditions as provided in section 8714b(c)(2), relating to continuation of additional optional life insurance.

Subsection (d)(1) provides that the full cost of the optional insurance on family members shall be withheld from the employee's pay. When the insurance on family members is continued, as provided under subsection (c)(2), the full cost shall be withheld from the former employee's annuity or compensation until the former employee becomes 65 years of age, at which time the family insurance shall be continued without cost to the former employee.

Subsection (d)(2) provides discretionary authority for agencies to waive retroactive collection of family insurance deductions.

Subsection (e) provides that the cost of the optional insurance on family members shall be determined by the OPM on the basis of the employee's age relative to such age groups as OPM establishes under section 8714a(e) of title 5.

Subsection (f) provides for payment of family insurance to the employee or, in the event of the death of the employee before payment can be made, to the person or persons entitled to the group life insurance in force on the employee under section 8705 of title 5.

Subsection (b) of section 8 of the bill amends section 8701 of title 5 by inserting a new subsection (d) at the end thereof. The new subsection (d) defines the term "family member" for the purpose of chapter 87. The term "family member" means the spouse of an employee or annuitant and any unmarried dependent child (other than a stillborn child) including an adopted child, stepchild (but only if the stepchild lived with the employee or annuitant in a regular parent-child relationship), or a recognized natural child, who is under 22 years of age or who, regardless of age, is incapable of selfsupport by virtue of mental or physical disability which existed before age 22. The term "dependent" means that the employee or annuitant involved was, at the time of the child's death, either living with or contributing to the support of the child, as determined in accordance with regulations prescribed by the Office of Personnel Management.

SECTION 9

Abolishment of advisory committee

Section 9 of the bill repeals dection 8713 of title 5, United States Code, which is the authority for the Employee Advisory Committee on Federal Employees Group Life Insurance.

SECTION 10

Effective dates

Subsection (a) of section 10 provides that, unless otherwise specified, the provisions of this Act shall take effect on the date of enactment and shall have no effect in the case of an employee who died, was separated, or retired before the date of enactment.

Subsection (b) of section 10 provides that the amendment made by subsection (d) of section 2 (premium pay for law enforcement officers) shall apply with respect to premium pay payable under section 5545(c)(2) of title 5, United Stated Code, from and after the first day of the first pay period which begins on or after the date of enactment.

Subsection (c) of section 10 provides that the amendments made by section 3 of the Act (continuation of regular group life insurance after retirement or while in receipt of workmen's compensation, and employee election to have additional amounts withheld from annuity or compensation for increased continued coverage) shall apply only in the case of an employee who retires or becomes entitled to receive workmen's compensation on or after the 180th day following the date of enactment or any earlier date that the Office of Personnel Management may prescribe which is at least 60 days after the date of enactment.

Subsection (d) of section 10 provides that the amendments made by section 7 (additional optional life insurance) and section 8 (optional insurance on family members) shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of enactment, or on any earlier date that the OPM may prescribe which is at least 60 days after the date of enactment. The amendments shall not apply to an employee who died, was finally separated, or retired before the effective date of the amendments.

SECTION 11

Availability of certain amounts in Employees' Life Insurance Fund

Section 11 provides that amounts credited to the Employees' Life Insurance Fund under section 8714a(d) of title 5 shall be available for expenses incurred by OPM in implementing the two new optional insurance plans authorized under sections 7 and 8 of the Act.

COST

Since employees will pay the full costs of the new insurance options, including the increased coverage for retirees after age 65, these program improvements will not increase Government costs, except for minor administrative expenses. The additional amounts of regular life insurance provided for employees under age 45 will result in additional outlays from the Employees' Life Insurance ranging from $21 million in the first year (fiscal year 1982) to $29 million in the fifth year. However, beginning in 1990, these additional outlays will be fully offset by the contributions which will be required from retirees under age 65.

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Compensation and Employee Benefits is vested with legislative and oversight jurisdiction over the Federal Employees' Group Life Insurance program. As a result of the hearings on this legislation, the subcommittee concluded that there was ample justification for amending the law in the manner provided under H.R. 7666.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 7666 will have no inflationary impact on the national economy.

ADMINISTRATIVE VIEWS

Set forth below are the views of the Office of Personnel Management.

OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., July 23, 1980.

Hon. JAMES M. HANLEY,
Chairman, Committee on Post Office and Civil Service,
House of Representatives.

DEAR MR. CHAIRMAN: I am writing to express the support of the Office of Personnel Management for H.R. 7666, a bill "To amend chapter 87 of title 5, United States Code, to increase the amounts of regular and optional life insurance available to Federal employees and provide optional life insurance on family members, and for other purposes."

H.R. 7666 would improve the benefit structure of the Federal Employees Group Life Insurance (FEGLI) pogram in several ways.

First, it would authorize two new employee-pay-all options providing additional life insurance on employees, in multiples of one to five times salary, and flat amounts of life insurance on family members. We believe these new options would significantly improve the program, especially for young employees, by allowing them to purchase insurance at group rates that are competitive with those available elsewhere and in amounts much greater than the current optional program.

Second, the bill would further improve the program for young employees by modifying the schedule of regular FEGLI benefits to pay twice the basic insurance amount to the beneficiaries of employees under age 35, 1.9 times the basic amount to those under 36, and so on until, at age 45 and over, only the basic amount would be payable. As benefits are currently provided, young employees can get better insurance coverage per premium dollar from various individual and group policies available elsewhere. This provision of H.R. 7666 would provide twice the coverage now afforded to employees under 35, with no increase in premium and, in conjunction with the new optional insurance, would make available a highly competitive insurance package through the Government's FEGLI program. In order to avoid increased costs to the Government during fiscal year 1981, the bill would provide that the modified schedule of regular benefits would become effective in fiscal year 1982; however, the two optional packages, which would not cost the Government anything, would become available within 6 months of enactment.

Third, H.R. 7666 would also require that insured employees who in the future continue insurance as civil service retirees (or as recipients of workers' compensation benefits) continue paying premiums for unreduced regular FEGLI coverage until age 65. At present, retirees pay no premiums and yet are fully covered until 65. With optional retirement available at age 55 and special retirement at even earlier ages, this present provision is very expensive and raises overall program costs in a way that unfairly discriminates against younger employees.

Finally, the bill would also make available better post-retirement coverage, although at the annuitant's own expense. It would permit eligible employees to choose to purchase at retirement (or upon receipt of workers' compensation) either the current post-retirement coverage (which requires a reduction in coverage by 2 percent of face value per month after age 65, until 25 percent of the insurance remains as permanent protection) or additional post-retirement coverage that would reduce at a lesser rate or not at all. This additional coverage would be completely at the annuitant's expense, and it would be paid for by having continuous deductions withheld from annuity in amounts determined by the Office of Personnel Management.

The bill would set, as the minimum for this improved post-retirement coverage, a reduction of no more than 1 percent per month after age 65 to a maximum reduction of 50 percent, but we expect that several options would be offered. For example, if an annuitant continued to pay an amount approximately equal to the employee share of the cost of regualr FEGLI (currently $6.63 per $1,000 of insurance annually), the insurance would reduce to 50 percent of the coverage originally in force; for about $10 per $1,000 annually, coverage would reduce to 60 percent of face value, and for about $20 per $1,000 annually, coverage could be maintained at the pre-retirement level without reduction. As another improvement for retirees, if H.R. 7666 becomes law, we plan to take administrative action to increase post-retirement lifetime benefits for employees who participate in the program for more than 25 years. This would be on top of the 25 percent of face value that now remains as a lifetime benefit, and it would be without cost to the retiree.

The expense to the Government of H.R. 7666 would be quite reasonable. Employees would pay the full costs of the new insurance options, including the increased coverage for retirees after age 65, so these improvements in the program would not increase the cost to the Government, except for minor incidental administrative expenses which cannot be precisely estimated. Increases in the amounts payable to survivors of younger employees under FEGLI regular insurance would, however, result in additional annual outlays from the Employee's Life Insurance Fund, as would the administrative change we would make in post-retirement coverage. These additional outlays would range from $21 million the first year to $29 million in the fifth year. However, H.R. 7666 would also require, beginning in 1990, that contributions be made by and on behalf of insured annuitants under age 65. These additional contributions would, in the long run, fully offset the increased outlays in the early years.

Thus, while these changes would eventually pay for themselves, until 1990 the cost of paying additional benefits would be borne by the Government. Because of the need to avoid all non-essential Government outlays in fiscal year 1981, we are pleased to see that the effective date of the liberalization that would initially increase outlays has been postponed until fiscal year 1982.

We believe that H.R. 7666 embodies positive and needed improvements in the FEGLI program and that it does so in a fiscally responsible way. For these reasons, we strongly support the bill and recommend favorable consideration by the Committee.

The Office of Management and Budget advises that enactment of H.R. 7666 would be consistent with the Administration's objectives.

Sincerely yours,

ALAN K. CAMPELL,
Director.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART G—INSURANCE AND ANNUITIES

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CHAPTER 87—LIFE INSURANCE

Sec.
8701. [Definition.] *Definitions.*
8702. Automatic coverage.
8703. Benefit certificate.
8704. Group insurance; amounts.
8705. Death claims; order of precedence; escheat.
8706. Termination of insurance.
8707. Employee deductions; withholding.
8708. Government contributions.
8709. Insurance policies.
8710. Reinsurance.
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8712. Annual accounting; special contingency reserve.
[8713. Advisory committee.]
8714. Employees' Life Insurance Fund.
8714a. Optional insurance.
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8715. Jurisdiction of courts.
8716. Regulations.

§8701. [Definition] *Definitions*

(a) For the purpose of this chapter, "employee" means—

(1) an employee as defined by section 2105 of this title;

(2) a Member of Congress as defined by section 2106 of this title;

(3) a Congressional employee as defined by section 2107 of this title;

(4) the President;

(5) an individual employed by the government of the District of Columbia;

(6) an individual employed by Gallaudet College;

(7) an individual employed by a county committee established under section 590h(b) of title 16; and

(8) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

but does not include—

(A) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(B) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone; or

(C) an employee excluded by regulation of the Office of Personnel Management under section 8716(b) of this title.

(b) Notwithstanding subsection (a) of this section, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this chapter. For the purpose of this subsection, "teacher" and "teaching position" have the meanings given them by section 901 of title 20.

(c) For the purpose of this chapter, "basic insurance amount" means, in the case of any employee under this chapter, an amount equal to the greater of—

(1) the annual rate of basic pay payable to the employee, rounded to the next higher multiple of $1,000, plus $2,000, or

(2) $10,000,

except that such amount may not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title, rounded to the next higher multiple of $1,000, plus $2,000. In the case of any former employee entitled to coverage under this chapter, such term means the basic insurance amount applicable for the employee at the time the insurance to which the employee is entitled as an employee under this chapter stops pursuant to section 8706(a) of this title.

(d)(1) For the purpose of this chapter, "family member", when used with respect to any individual, means—

(A) the spouse of such individual; and

(B) an unmarried dependent child of such individual (other than a stillborn child), including an adopted child, stepchild (but only if the stepchild lived with such individual in a regular parent-child relationship), or recognized natural child—

(i) who is under 22 years of age, or

(ii) who is 22 years of age or older and is incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

(2) For the purpose of this subsection, "dependent", in the case of any child, means that the individual involved was, at the time of the child's death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe.

* * * * * * *

8704. Group insurance; amounts

[(a) An employee eligible for insurance is entitled to be insured for n amount of group life insurance, plus an equal amount of group ccidental death and dismemberment insurance, in accordance with he following schedule, which schedule shall be automatically extended orrespondingly by the amounts of increases in the annual rate of asic pay for positions at level II of the Executive Schedule under ection 5313 of this title:

If annual pay is—		The amount of group life insurance is—	The amount of group accidental death and dismemberment insurance is—
Greater than—	But not greater than—		
0	$8,000	$10,000	$10,000
$8,000	9,000	11,000	11,000
9,000	10,000	12,000	12,000
10,000	11,000	13,000	13,000
11,000	12,000	14,000	14,000
12,000	13,000	15,000	15,000
13,000	14,000	16,000	16,000
14,000	15,000	17,000	17,000
15,000	16,000	18,000	18,000
16,000	17,000	19,000	19,000
17,000	18,000	20,000	20,000
18,000	19,000	21,000	21,000
19,000	20,000	22,000	22,000
20,000	21,000	23,000	23,000
21,000	22,000	24,000	24,000
22,000	23,000	26,000	25,000
23,000	24,000	26,000	26,000
24,000	25,000	27,000	27,000
25,000	26,000	28,000	28,000
26,000	27,000	29,000	29,000
27,000	28,000	30,000	30,000
28,000	29,000	31,000	31,000
29,000	30,000	32,000	32,000
30,000	31,000	33,000	33,000
31,000	32,000	34,000	34,000
32,000	33,000	35,000	35,000
33,000	34,000	36,000	36,000
34,000	35,000	37,000	37,000
35,000	36,000	38,000	38,000
36,000	37,000	39,000	39,000
37,000	38,000	40,000	40,000
38,000	39,000	41,000	41,000
39,000	40,000	42,000	42,200
40,000	41,000	43,000	43,000
41,000	42,000	44,000	44,000
42,000	43,000	45,000	45,000
43,000	44,000	46,000	46,000
44,000	45,000	47,000	47,000
45,000	46,000	48,000	48,000
46,000	47,000	49,000	49,000
47,000	48,000	50,000	50,000
48,000	49,000	51,000	51,000
49,000	50,000	52,000	52,000
50,000	51,000	53,000	53,000
51,000	52,000	54,000	54,000
52,000	53,000	55,000	55,000
53,000	54,000	56,000	56,000
54,000	55,000	57,000	57,000
55,000	56,000	58,000	58,000
56,000	57,000	59,000	59,000
57,000	----------------------	60,000	60,000

]

(a) An employee eligible for insurance is entitled to be insured for an amount of group life insurance equal to—

(1) such employee's basic insurance amount, multiplied by

(2) the appropriate factor determined on the basis of such employee's age in accordance with the following schedule:

If the age of the employee is:	*The appropriate factor is:*
35 or under	*2.0*
36	*1.9*
37	*1.8*
38	*1.7*
39	*1.6*
40	*1.5*
41	*1.4*
42	*1.3*
43	*1.2*
44	*1.1*
45 or over	*1.0*

(b) *An employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection.* Subject to the conditions and limitations approved by the Office of Personnel Management which are contained in the policy purchased by the Office, the group accidental death and dismemberment insurance provides payment as follows:

Loss	*Amount payable*
For loss of life	Full amount [shown in the schedule in subsection (a) of this section] *of the employee's basic insurance amount.*
Loss of one hand or of one foot or loss of sight of one eye.	One-half the amount shown in the schedule in subsection (a) of this section.
Loss of two or more such members	Full amount [shown in the schedule in subsection (a) of this section] *of the employee's basic insurance amount.*

For any one accident the aggregate amount of group accidental death and dismemberment insurance that may be paid may not exceed [the amount shown in the schedule in subsection (a) of this section] *an amount equal to the employee's basic insurance amount.*

(c) The Office shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay and shall specify the types of pay included in annual pay. [For the purpose of this chapter, "annual pay" includes premium pay under section 5545 (c)(1) of this title]. *For the purpose of this chapter, "annual pay" includes—*

(1) premium pay under section 5545(c)(1) of this title; and

(2) with respect to a law enforcement officer as defined in section 8331(20) of this title, premium pay under section 5545(c)(2) of this title.

* * * * * * *

§ 8706. Termination of insurance

(a) A policy purchased under this chapter shall contain a provision, approved by the Office of Personnel Management, to the effect that insurance of an employee stops on his separation from the service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office.

[(b)(1) If on the date the insurance would otherwise stop the employee retires on an immediate annuity and has been insured under this chapter throughout—

[(A) the 5 years of service immediately preceding such date, or

[(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office.

[(2) If on the date the insurance would otherwise stop the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

[(A) the 5 years of service immediately preceding such date, or

[(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office, during the period the employee is receiving compensation for work injuries and is held by the Secretary of Labor or his delegate to be unable to return to duty.

[(3) The amount of life insurance continued under paragraph (1) or paragraph (2) of this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.]

(b)(1) In the case of any employee who retires on an immediate annuity and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding the date of such retirement, or

(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office.

(2) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding the date such employee becomes entitled to such compensation, or

(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office, during the period the employee is receiving such compensation and is held by the Secretary of Labor or the Secretary's delegate to be unable to return to duty.

(3) The amount of life insurance continued under paragraph (1) or (2) of this subsection shall be continued, with or without reduction, at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for disease or injury, in accordance with the employee's written election at the time eligibility to continue insurance during retirement or receipt of such compensation arises, as follows:

(A) the employee may elect to have the deductions required by section 8707 of this title withheld from annuity or compensation, and such employee's life insurance shall be reduced each month by 2

percent of the face value until 25 percent of the amount of life insurance in force before the first reduction remains; or

(B) in addition to any deductions which would be required if the insurance were continued as provided under subparagraph (A) of this paragraph, the employee may elect continuous withholdings from annuity or compensation in amounts determined by the Office, and such employee's life insurance coverage shall be either continued without reduction or reduced each month by no more than 1 percent of its face value until no less than 50 percent of the amount of insurance in force before the first reduction remains.

(4) If an employee elects to continue insurance under subparagraph (B) of paragraph (3) of this subsection at the time eligibility to continue insurance during retirement or receipt of such compensation for disease or injury arises, such individual may later cancel that election and life insurance coverage shall continue as if the individual had originally elected coverage under subparagraph (A) of paragraph (3) of this subsection.

* * * * * * *

§ 8707. Employee deductions; withholding

[During each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the pay of the employee his share of the cost of the group life insurance and accidental death and dismemberment insurance. The amount withheld shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost of each $1,000 of insurance, as determined by the Office.]

(a) During each period in which an employee is insured under a policy purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the employee's pay a share of the cost of the group life insurance and accidental death and dismemberment insurance.

(b)(1) Whenever life insurance continues after an employee retires on an immediate annuity or while the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in section 8706(b) of this title, deductions for insurance shall be withheld from such employee's annuity or from such compensation, except that, in any case in which the insurance is continued as provided in section 8706(b)(3)(A) of this title, the deductions shall not be made for months after the calendar month in which such employee becomes 65 years of age.

(2) Notwithstanding paragraph (1) of this subsection, insurance shall be so continued without cost (other than as provided under section 8706(b)(3)(B)) to each such employee who so retires, or commences receiving such compensation, on or before December 31, 1989.

(c) The amount withheld from the pay, annuity, or compensation of each employee subject to insurance deductions shall be at the rate, adjusted to the nearest half-cent of 66⅔ percent of the level cost as determined by the Office for each $1,000 of the employee's basic insurance amount.

(d) If an agency fails to withhold the proper amount of life insurance deductions from an individual's salary, compensation, or retirement annuity, the collection of such unpaid deductions may be waived by the agency if, in the judgment of the agency, the individual is without fault

and recovery would be against equity and good conscience. However, if the agency so waives the collection of unpaid deductions, the agency shall submit an amount equal to the sum of the uncollected deductions and related agency contributions required under section 8708 of this title to the Office for deposit to the Employees' Life Insurance Fund.

* * * * * * *

§8709. Insurance policies

(a) The Office of Personnel Management, without regard to section 5 of title 41, may purchase from one or more life insurance companies a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by this chapter. A company must meet the following requirements:

(1) It must be licensed to transact life and accidental death and dismemberment insurance under the laws of 48 of the States and the District of Columbia.

(2) It must have in effect, on the most recent December 31 for which information is available to the Office, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

(b) A company issuing a policy under subsection (a) of this section shall establish an administrative office under a name approved by the Office.

(c) The Office at any time may discontinue a policy purchased from a company under subsection (a) of this section.

(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that such law or regulation is inconsistent with the contractual provisions.

(2) For the purpose of this section, 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

* * * * * * *

[§8713. Advisory committee

[(b) The Director of the Office of Personnel Management shall appoint a committee composed of five employees insured under this chapter, who serve without additional pay, to advise the Office regarding matters of concern to employees under this chapter.]

* * * * * * *

§8714a. Optional insurance

(a) Under the conditions, directives, and terms specified in sections 8709–8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each insured employee equal amounts of optional life insurance and accidental death and dismemberment insurance in addition to the amounts provided in section 8704(a) of this title.

(b) The optional life insurance and accidental death and dismemberment insurance shall be made available to each insured employee under such conditions as the Office shall prescribe and in amounts approved by the Office but not more than the greater of $10,000 or an amount which, when added to the amount provided in section 8704 (a) of this title, makes the sum of his insurance equal to his annual pay.

(c)(1) The optional insurance on an employee stops on his separation from service, 12 months after discontinuance of his pay, or on his entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title.

(2)(A) In the case of any employee who retires on an immediate annuity and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date of such retirement, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office.

(B) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date such employee becomes entitled to such compensation, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Commission,[1] during the period the employee is receiving such compensation for disease or injury and is held by the Secretary of Labor or his delegate to be unable to return to duty.

(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be [subject to the same monthly reductions as required for regular life insurance under section 8706(b)(3) of this title.] *reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.*

(d) (*1*) During each period in which an employee has the optional insurance the full cost thereof shall be withheld from his pay. During each period in which an employee continues optional life insurance after retirement or while in receipt of compensation for work injuries as provided in section 8706(b) of this title, the full cost thereof shall be withheld from his annuity or compensation, except that, at the end of the calendar month in which he becomes 65 years of age, the optional life insurance shall be without cost to him. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for separately from amounts withheld and contributed under sections 8707 and 8708 of this title.

(2) If an agency fails to withhold the proper cost of optional insurance from an individual's salary, compensation, or retirement annuity, the

collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

* * * * * * *

§8714b. Additional optional life insurance

(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of additional optional life insurance (without accidental death and dismemberment insurance). An employee may elect coverage under this section without regard to whether the employee has elected coverage under optional insurance available under section 8714a of this title.

(b) The additional optional insurance provided under this section shall be made available to each eligible employee who has elected coverage under this section, under such conditions as the Office shall prescribe, in multiples, at the employee's election, of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee (rounded to the next higher multiple of $1,000) except that such coverage may not exceed an amount equal to 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title (rounded to the next higher multiple of $1,000). An employee may reduce or stop coverage elected pursuant to this section at any time.

(c)(1) The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title.

(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, so much of the additional optional insurance as has been in force for not less than—

(A) The 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

(B) the full period or periods of service during which such insurance was available to the employee, if less than 5 years,

may be continued under conditions determined by the Office after retirement or while the employee is receiving such compensation under subchapter I of chapter 81 of this title and is held by the Secretary of Labor (or the Secretary's delegate) to be unable to return to duty. The amount of insurance continued under this paragraph shall be reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age and is retired or is in receipt of such compensation. Such reduction shall continue for 50 months at which time the insurance stops.

(d)(1) During each period in which the additional optional insurance is in force on an employee the full cost thereof shall be withheld from the

employee's pay. During each period in which an employee continues additional optional insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost thereof shall be withheld from the former employee's annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the additional optional life insurance shall be without cost to the former employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

(2) If an agency fails to withhold the proper cost of additional optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(e) The cost of the additional optional insurance shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

(f) The amount of additional optional life insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.

§8714c. Optional life insurance on family members

(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of optional life insurance (without accidental death and dismemberment insurance) on the employee's family members.

(b) The optional life insurance on family members provided under this section shall be made available to each eligible employee who elects coverage under this section, under such conditions as the Office shall prescribe, in the amount of $5,000 for a spouse and $2,500 for each child described in section 8701(d). Such employee may stop coverage elected under this section at any time.

(c)(1) Optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, 12 months after discontinuance of pay, or the employee's entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to individual policies under conditions approved by the Office.

(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and who has had in force insurance under this section for no less than—

(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

(B) the full period or periods of service during which such ininsurance was available to the employee, if less than 5 years,

optional life insurance on family members may be continued under the same conditions as provided in section 8714b(c)(2) of this title.

(d)(1) During each period in which the optional life insurance on family members is in force the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues optional life insurance on family members after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost shall be withheld from such annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the optional life insurance on family members shall be without cost to the employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

(2) If an agency fails to withhold the proper cost of optional life insurance on family members from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(e) The cost of the optional life insurance on family members shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

(f) The amount of optional life insurance which is in force under this section on a family member of an employee or former employee on the date of the death of the family member shall be paid, on the establishment of a valid claim by such employee, to such employee or, in the event of the death of such employee before payment can be made, to the person or persons entitled to the group life insurance in force on the employee under section 8705 of this title.

* * * * * * *

[illegible]

(B) the full period [illegible] which [illegible] compensation was [illegible] to the employee, if less than 3 years.

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1281

VOLUNTARY WITHHOLDING OF STATE INCOME TAX FOR CIVIL SERVICE ANNUITANTS

September 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mrs. Spellman, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 6372]

The Committee on Post Office and Civil Service to whom was referred the bill (H.R. 6372) to amend title 5, United States Code, to provide for voluntary withholding of State income tax for civil service annuitants, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Purpose

The purpose of this legislation is to provide for the voluntary withholding of State income tax for civil service annuitants.

Committee Action

H.R. 6372 was introduced by Representative Gladys Noon Spellman on January 30, 1980. The Subcommittee on Compensation and Employee Benefits held a hearing on H.R. 6372 on June 5, 1980 (Serial No. 96–60) and testimony was received from representatives of the Office of Personnel Management and associations of retired employees.

On August 27, 1980, the Committee on Post Office and Civil Service ordered H.R. 6372 favorably reported by a voice vote.

Statement

H.R. 6372 would require the Office of Personnel Management to enter into agreements with States to withhold State income taxes from civil service annuities, a benefit now enjoyed only by active employees. The income tax withholding would be made from the monthly annuity of any annuitant who voluntarily asks for such withholding in writing.

Since 1975, the Civil Service Commission (now the Office of Personnel Management) has had the authority to provide for allotments from civil service annuities, but the law does not require any particular allotment. This authority was provided by Public Law 94-166 (5 U.S.C. 8345(g)), which provides that an annuitant "may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate."

The Office of Personnel Management has been claiming for three years that it could not make allotments for State income tax purposes because its computers are overloaded. The committee might have continued to accept this argument if OPM had not agreed in recent months to make allotments for monthly union dues from annuities of retirees who were members of certain Federal employee unions. The committee is very pleased that OPM is able to help certain retirees by providing allotments for union dues. This demonstrates, however, that OPM has the capability to provide allotments for other purposes.

Under present law, Federal Government retirees must make periodic estimated tax payments that sometimes cause great inconvenience. Some retirees are even forced at tax time to take out short-term loans at very high interest rates in order to meet their financial obligations. The committee believes that this is an unnecessary inconvenience that certainly should be removed.

Individual States would benefit from enactment of H.R. 6372 since it would facilitate the collection of State taxes. This legislation has gathered the support of the National Association of Governors, the U.S. Conference of Mayors, and the National Association of Counties, and the committee urges its enactment.

SECTION ANALYSIS

H.R. 6372 amends section 8345 of title 5. United States Code, by adding at the end thereof a new subsection (k).

Paragraph (1) of new subsection (k) provides that the Office of Personnel Management shall enter into an agreement within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of a civil service annuitant who voluntarily requests, in writing, such withholding.

Paragraph (2) of new subsection (k) provides that an annuitant may have in effect at any time only one request for withholding of State income tax, and that an annuitant may not have more than two such requests in effect with respect to different States during any one calendar year.

Paragraph (3) of new subsection (k) provides that an annuitant may change the State designated for the purpose of having withholdings made, and may request that the withholdings be remitted in accordance with that change. It further provides that an annuitant may revoke any request for withholding and that any change in the State designated or revocation is effective on the first day of the month in which the request or the revocation is processed by the Office of Personnel Management. In no event may the change or revocation be effective later than the first day of the first month beginning after the day on which the request or revocation is received by the Office.

Paragraph (4) of new subsection (k) provides that the subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of the subsection. Paragraph (4) further provides that the Office of Personnel Management may not accept pay from a State for services performed in withholding State income taxes from annuitants.

Paragraph (5) of new subsection (k) provides that for the purpose of the subsection "State" means a State, the District of Columbia, or any territory or possession of the United States.

Cost

By letter of August 28, 1980, the committee requested a cost estimate on H.R. 6372 from the Congressional Budget Office. That cost estimate was not received in time to include with this report. The committee estimates that the enactment of this legislation will result in no significant additional cost to the Government.

Oversight

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Compensation and Employee Benefits is vested with legislative and oversight jurisdiction over the civil service retirement program. As a result of the hearing on this legislation, the subcommittee concluded that there was ample justification for amending the law in the manner provided under H.R. 6372.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House rule X.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of House rule XI, the committee has concluded that the enactment of H.R. 6372 will have no inflationary impact on the national economy.

Administrative Views

Set forth below are the views of the Office of Management and Budget.

Executive Office of the President,
Office of Management and Budget,
Washington, D.C., June 4, 1980.

Hon. James M. Hanley,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is in reply to the committee's request for the views of this Office on H.R. 6372, "To amend title 5, United

States Code, to provide for voluntary withholding of State income tax for civil service annuitants."

The purpose of H.R. 6372 is to authorize the voluntary withholding from Civil Service retirement annuities of State income taxes.

We concur in the views expressed by the Office of Personnel Management in its testimony on this bill and, accordingly, are unable to recommend enactment of H.R. 6372.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 8345 OF TITLE 5, UNITED STATES CODE

CHAPTER 83—RETIREMENT

* * * * * * *

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

* * * * * * *

§ 8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) * * *

* * * * * * *

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect with respect to different States during any one calendar year.

(3) An annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of

the first month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities.

(5) For the purpose of this subsection, "State" means a State, the District of Columbia, or any territory or possession of the United States.

○

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1282

PROVIDING THAT CERTAIN LANDS CONSTITUTING PART OF THE EL DORADO NATIONAL FOREST BE CONVEYED TO CERTAIN PERSONS WHO PURCHASED AND HELD SUCH LANDS IN GOOD FAITH RELIANCE ON AN INACCURATE SURVEYOR'S MAP

September 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. Udall, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 6175]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6175), to provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

Sec. 1(a). Subject to section 2 of this Act, the Secretary of Agriculture shall convey to any person, all right, title and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, California, if—

(1) such portion was depicted in the 1957 recorded surveyor's map of the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, as being included in a lot with respect to which title to the remaining portion of such lot is held by such person, and

(2) such portion was determined, following surveys conducted under the auspices of the Forest Service in 1974 and 1976, and contrary to the map referred to in paragraph (1), to be a part of the El Dorado National Forest.

(b) Each person to whom property is conveyed pursuant to this Act shall reimburse the Secretary of Agriculture for all administrative expenses incident to such conveyance, and in addition shall pay to the United States the following:

(1) an amount equal to the acreage or fraction thereof of the property conveyed to such person, multiplied by the per-acre price for the remainder of the lot (exclusive of any improvements) referred to in paragraph (1) of

59–006 O

subsection (a) of this section paid by such person or his predecessor in interest at the time of the original purchase of such lot after formation of the subdivision; and (2) if such person elects to receive title to the mineral interests in the property conveyed, the fair market value thereof; but if such person does not so elect, all such mineral interests shall be reserved to the United States.

Sec. 2(a). A conveyance may be made under this Act to a person only if such person submits a written application to the Secretary of Agriculture within five years after the date of the enactment of this Act, together with such proof of title as the Secretary may consider appropriate.

Sec. 3(a). For purposes of this Act, the term "1957 recorded surveyor's map," used with respect to the Kyburz Mountain Resort Unit Numbered 1 Subdivision, refers to the map of such subdivision which was filed in the Office of the County Recorder, El Dorado County, California, on October 3, 1957.

(b) For purposes of this Act, the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, consists of a portion of the northwest quarter of section 27, and the northeast quarter of section 28, township 11 north, range 15 east, Mount Diablo Meridian, more particularly described in book 4, page 57, and book 5, page 41, of the El Dorado County Records of Survey.

Sec. 4. Subject to valid existing rights, all mineral interests retained by the United States pursuant to section 1(b)(2) of this Act are hereby withdrawn from all forms of entry or appropriation under the mining laws and from the operation of the mineral leasing laws of the United States.

PURPOSE

H.R. 6175 would enable the owners of eleven separate private lots in a summer-home subdivision adjoining the El Dorado National Forest to acquire the small parcels of National Forest land which they erroneously believed that they acquired when they purchased their lots after the subdivision was laid out in 1957 and for which they have paid taxes ever since. The parcels were and are in the National Forest, but the subdivision survey indicated they were in the subdivision instead.

BACKGROUND AND NEED

The situation with which this bill deals arose because of an erroneous survey by the agents of the subdivision's developer. A total of only 1.68 acres of National Forest land is involved, divided among 11 parcels which pertain to separate summer-home lots. According to the U.S. Forest Service, the lands in question are not necessary for the proper administration of the remainder of the El Dorado National Forest, of which they form a miniscule fraction.

THE COMMITTEE AMENDMENT

As introduced, the bill would have provided for transfer of the Federal lands involved without consideration. However, because the record shows that the problem dealt with by the bill does not result from any errors on the part of the Government, the Committee adopted amendments to the bill which will have the effect of requiring that persons who own the affected lots, and who wish to acquire the relevant National Forest lands, bear the administrative costs associated with the conveyance. In addition, such persons will have to pay for the land which they will receive.

In an effort to be fair both to the private parties involved and to the public interest, the Committee amendments would allow the purchase of the surface estate in the affected lands to be at the same per-acre rate as the private parties paid for their lots in 1957; and the private parties would be afforded the option of deciding whether or not they wished to acquire the mineral interests in the parcel to be conveyed. If the mineral interests are conveyed, the United States will be compensated for the value thereof, but if an eligible private party should choose not to pay for the necessary mineral assessment and for the mineral interests themselves, these interests will be retained by the United States. As a further protection for the summer-home owners, any such federally-retained mineral interests are withdrawn from mining claims or leasing so that the private landowners will be protected from the possibility of adverse entries on their summer-home lots.

The committee has noted that at the Public Lands Subcommittee hearing on this bill, the Forest Service indicated that it would prefer new administrative authority to resolve situations such as this one without the necessity of congressional action. However, pending legislation granting such authority, the Committee believes that enactment of H.R. 6175 is desirable in order to deal with this particular situation in an equitable manner that will allow affected private individuals to clear the title to their summer-home lots while affording proper return to the United States.

SECTION-BY-SECTION ANALYSIS

Section 1 directs the Secretary of Agriculture to convey to qualifying persons the right, title and interest of the United States to certain national forest lands identified through an appropriate reference to certain maps and surveys. Subsection (b) specifies that such conveyance is to be conditioned upon payment by the recipient of the administrative costs of the transfer, and also payment of the value of the surface estate, to be calculated at the same per-acre rate as was paid for the remainder of the lot at the time the subdivision was created in the 1950's. This subsection also gives the recipient the option of deciding whether or not to acquire the mineral interests in the lands. If a recipient of a surface estate elects to receive the mineral interests, the value thereof must be paid to the United States.

Section 2 requires that a person qualifying to receive lands under the bill must submit an application for such conveyance within 5 years after enactment, and supply appropriate proof of his qualification to receive them.

Section 3 defines for purposes of the bill the terms "1957 recorded surveyor's map" and states what area is meant by the reference to the "Kyburz Mountain Resort Unit Numbered 1" which is the subdivision dealt with in this bill.

Section 4 provides that those mineral interests (if any) which are reserved to the United States pursuant to section 1 are withdrawn, subject to valid existing rights, from the mining and mineral leasing laws. The purpose of this withdrawal is to protect those recipients of the surface estate, by foreclosing the locating of mining claims or the sale of mineral leases on the lands to which they receive the surface estate.

COST AND BUDGET ACT COMPLIANCE

H.R. 6175 authorizes no appropriations, and should have no impact on the Federal budget. The bill as amended would require that administrative costs of conveyances thereunder be reimbursed to the United States. The analysis of the Congressional Budget Office, which the Committee adopts as its own, follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., August 25, 1980.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6175 a bill to provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map, as ordered reported by the House Committee on Interior and Insular Affairs, August 20, 1980.

This bill directs the Secretary of Agriculture to convey 1.684 acres of land to individuals shown as the property owners on the relevant tax records. These individuals will reimburse the Federal Government for the administrative costs of the conveyance and will pay the 1957 price for the land (the price at the original time of purchase). No additional cost to the Government is anticipated to be incurred as a result of enactment of this bill. Based on preliminary information from the Forest Service, it is expected that the Federal Government will receive approximately $10,000 for the land involved.

Sincerely,

James Blum
(For Alice M. Rivlin, Director).

INFLATIONARY IMPACT

Pursuant to Rule XI, clause 2(l)(4) of the Rule of the House of Representatives, the Committee states that it believes that the enactment of H.R. 6175, as amended, will have no inflationary impact on the national economy.

LEGISLATIVE HISTORY AND OVERSIGHT STATEMENT

The Subcommittee on Public Lands held a hearing on H.R. 6175 on June 24, 1980, and ordered it favorably referred to the full Committee with amendments. No recommendations were received by the Committee pursuant to rule X, clause 2(b)(2).

COMMITTEE RECOMMENDATION

On August 20, 1980, the Committee on Interior and Insular Affairs, by voice vote, ordered the bill, as amended, favorably reported.

DEPARTMENTAL REPORT

The report of the Department of Agriculture on this proposed legislation, dated August 27, 1980, is as follows:

Department of Agriculture,
Office of the Secretary,
Washington, D.C., August 27, 1980.

Hon. Morris K. Udall,
Chairman, House Interior and Insular Affairs Committee, House of Representatives, Washington, D.C.

Dear Mr. Chairman: As you requested, here is the report of the Department of Agriculture on H.R. 6175, a bill "To provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map."

The Department of Agriculture recommends that H.R. 6175 not be enacted, and that our legislative proposal transmitted to the Congress on December 21, 1979, be enacted in lieu of H.R. 6175. Legislation similar to our proposal has been introduced as H.R. 6257 and H.R. 7260.

H.R. 6175 would direct the Secretary of Agriculture to convey without consideration, to certain persons, all right, title, and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, Calif., if such portion was found to be part of an overlap on National Forest land created by an erroneous private survey in 1957.

Surveys conducted by the Forest Service in 1974 and 1976 revealed that the boundaries of certain lots in the Kyburz Mountain Resort Unit No. 1 Subdivision are about 53 to 61 feet inside of the El Dorado National Forest. The overlap involves approximately 11 landowners and comprises 1.684 acres more or less.

We do not support H.R. 6175 for two major reasons. First, this bill addresses only one of an estimated 50,000 similar cases involving innocent trespass. We believe that general statutory authority providing the Secretary with a means to resolve these cases is more desirable and efficient. Second, H.R. 6175 would direct that the United States convey the land without consideration. Since the United States was not party to or did not cause or create the overlap, we strongly believe the United States should receive just compensation for any land conveyed to a private party.

We recommend enactment of H.R. 6257 or H.R. 7260, if amended, to conform with our legislative proposal. Such legislation would permit the Secretary of Agriculture to dispose of certain National Forest System lands either by sale or exchange if determined to be in the public interest. Lands to be disposed of would be limited to three specific kinds: (1) irregularly shaped tracts interspersed with or adjacent to mineral patents, (2) tracts innocently occupied in trespass by private parties due to surveying errors, and (3) road rights-of-way owned by the United States but not used for that purpose. In disposing of these small tracts of National Forest System lands, the Secretary would be authorized to accept either lands, interests in lands, or cash payment equal to the fair market value of the lands. The mineral estate would be included in the determination of fair market value. A quitclaim deed would convey the title to the land containing conditions considered appropriate to protect the public interest.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Bob Bergland,
Secretary.

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96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1283

AMENDING SECTION 2 OF THE INDIAN CLAIMS COMMISSION ACT OF AUGUST 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), AS AMENDED

September 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Udall, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 7519]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to which was referred the bill (H.R. 7519) to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Purpose

The purpose of H.R. 7519, introduced by Mr. Udall, is to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049), to provide that the Government may not claim gratuitous offsets arising subsequent to June 30, 1951.

Background

The Indian Claims Commission was created by the act of August 13, 1946, to hear claims of Indian tribes against the United States which arose prior to August 13, 1946. Section 2 of the act allowed the United States to claim as offsets against any awards the kind of offsets which would be allowed to a plaintiff in the U.S. Court of Claims.

In addition, however, the Claims Commission Act also permitted the United States to claim, and the Commission to consider, offsets for "all money or property given to or funds expended gratuitously for the benefit of the" tribe involved. These kinds of offset claims by the United States would not be allowed in a normal Court of Claims action.

Under the Indian Claims Commission Act, tribes had 5 years after enactment to file their claims against the United States. Until recently, after more than two-thirds of all claims filed have been disposed of, the Justice Department had claimed gratuitous offsets through June 30, 1951, the end of the fiscal year in which suits had to be filed.

Recently, however, the Justice Department began to claim gratuitous offsets down to the present time. This is not only discriminatory against tribes whose claims have not been completed, but it also has the potential of chilling the established policy of the Congress to encourage Indian tribes to begin to assume the operation of programs on their reservations under the Indian Self-Determination Act.

While the Justice Department has retreated from the policy of claiming post-1951 gratuities, there is nothing to prevent another administration from doing so. H.R. 7519 amends the Indian Claims Commission Act to provide that such offsets cannot be claimed by the United States or awarded by the Court of Claims, which now has the task of completing the defunct Commission's work.

ANALYSIS

The bill amends the Indian Claims Commission Act of August 13, 1946, to provide that the United States may not claim, as offsets against awards to Indian tribes, funds gratuitously expended for the benefit of the particular tribe after June 30, 1951.

COST AND INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 7519 will represent no cost to the United States and will have no inflationary impact. The cost analysis prepared by the Congressional Budget Office, which the committee adopts as its own, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 18, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7519, a bill to amend section 2 of the Indian Claims Commission Act of August 13, 1946, as amended and ordered reported by the House Committee on Interior and Insular Affairs, July 30, 1980.

H.R. 7519 would prohibit the Department of Justice from making certain claims before the U.S. Court of Claims. Under current law, the Department of Justice is allowed to claim that moneys expende gratuitously by the United States on behalf of American Indian tribe should be used to offset any eventual awards against the United State that result from various Indian claims. H.R. 7519 would prohibit th Department of Justice from claiming as offsets any money expende after June 30, 1951.

Based on this review, it appears that no significant additional co would be incurred by the Federal Government as a direct result of th enactment of this bill. While substantial amounts of money are e pended gratuitously on Indians and Indian programs annually h the government, the government has met with little success in havi these expenditures included as offsets to various awards. Since fisc year 1973, the courts have allowed only $156,510 in offsetting claims, none of which occurred after June 30, 1951. The likelihood that claims for expenditures occurring after June 30, 1951, would be allowed is remote, and thus no significant offsets to claims are expected to be lost as a result of this bill.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the committee and no recommendations were submitted to the committee, pursuant to rule X, clause 2(b) 2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of the bill.

DEPARTMENTAL REPORTS

The reports of the Departments of Justice and Interior, both dated July 30, 1980, follow:

U.S. DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL, LEGISLATIVE AFFAIRS,
Washington, D.C., July 30, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of the Department of Justice on H.R. 7519, to amend section 2 of the Indian Claims Commission Act of 1946.

Until recently, it was the practice of the Government to claim as offsets only those expenditures that were made prior to the end of 1951, and to reserve any claim for offsets for subsequent gratuities for the purpose of asserting those in later litigation if it occurred. There are, however, presently pending five cases, filed pursuant to the Indian Claims Commission Act, in which the Government has either claimed or is considering claiming certain expenditures made after 1951.

In one of those five cases, recently tried and submitted to the trial judge of the Court of Claims, offsets in excess of $4 million were claimed. All of the claimed post-1951 expenditures were made pursuant to two general annual appropriations for the benefit of Indian tribes. These are entitled "Operations of Indian Programs" and "Resources Management." In another of those cases the Government is claiming $7 million for gratuitously made expenditures pursuant to the same two general annual appropriations. The other three cases will probably involve claims for similar amounts. The two-named appropriations involve substantial sums of money. During fiscal years 1975–78, inclusive, appropriations for operations of Indian programs were in excess of $2.5 billion, including appropriations for resources management of about $440 million during fiscal years 1969–74. The total, which might be subject to offset claims, would be limited by the number of cases remaining under the Indian Claims Commission Act (there are presently 80 cases remaining out of 651), and by statutory exclusions in the act. The Government cannot recover as offsets expenditures for agency or administrative, educational, health or highway purposes or for expenditures made pursuant to the Indian Reorganization Act, except section 5 (25 U.S.C. 70a).

In addition to general annual appropriation acts, legislation may be enacted that provides for large sums to be gratuitously expended to benefit a specific tribe. The draft bill would eliminate those expenditures as possible offsets.

A review of the final awards entered since the end of fiscal year 1973 shows that only $156,510.11, on claims of about $5 million, has been allowed. None of these allowed offsets included post-1951 expenditures.

If Congress decides as a matter of policy that the Government ought not to be permitted to claim post-1951 offsets, being informed of pending and potential offset claims which will be barred, the Department of Justice does not oppose enactment of the draft bill.

Claims for gratuitous offsets have been only marginally productive in reducing the Government's liability over the past 6 years. A 1951 cut-off date on permitted offsets will not discriminate against either the tribes who have previously obtained awards or those whose claims are still pending. If this is to be the policy of Congress the Department would favor early enactment before pending claims go to judgment.

However, with respect to technical accuracy we submit that it would be appropriate to add at the conclusion of the proposed amendment the words, "under the provisions of this section." The amendment would thus read: "*Provided*, That no money or property given to or funds expended gratuitously for the benefit of the claimant after June 30, 1951, shall be set off against any award made to the claimant under the provisions of this section."

We request the additional language in order to avoid possible future disputes which might arise in other Indian litigation brought under statutory authority other than the subject Indian Claims Commission Ac in which offsets could be considered.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

Alan A. Parker,
Assistant Attorney General.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., July 30, 1980.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on H.R. 7519, a bill to amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70a), as amended.

We recommend the enactment of H.R. 7519.

H.R. 7519 would amend section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1050; 25 U.S.C. 70a) to provide that no money or property given to or funds expended gratuitously for the benefit of any claimant after June 30, 1951, shall be set off against any award to such claimant under that act.

We believe that H.R. 7519 would shorten the length of time necessary to complete the litigation of claims cases, lower the amount of litigation expenses for both plaintiffs and defendants, and result in more equal treatment for tribes whose cases under the act have not yet been concluded.

We defer to the Department of Justice with respect to the amounts of offsets in past cases under the act and the costs of determining and pleading such offsets. It is our understanding, however, that the cost-benefit relationship involved has not been a favorable one.

The offset phase of a case generally lasts from 2 to 3 years. The most recent case involving offsets is the *Turtle Mountain Chippewa* case, dockets 113, 221, 246, and 191. Determination of offsets has been underway in that case since September 20, 1978, and it is expected that it may be another 6 months to a year before the final determination is made.

When the Indians Claims Commission was created in 1946, it was expected that the Commission's work would be completed by 1957. Since then, the life of the Commission was extended, from time to time, until September 30, 1978. Thereafter, the remaining cases were transferred to the U.S. Court of Claims. Approximately 80 Indian claims cases are currently pending before that court for final adjudication. While the majority of the plaintiff tribes involved have received judgment fund awards in the past, at least nine tribes have not yet had any case under the 1946 act concluded, including the Navajo Nation, the Sioux Tribes of the Crow Creek Reservation, the Pine Ridge Reservation, and the Rosebud Reservation, the Pueblos of Nambe, San Ildefonso, Santa Clara, and Santo Domingo, and the Wichita Tribe.

The total amount of possible offsets that may be deducted from an eventual award to a tribe may increase with every year that passes before a determination is made regarding the gross amount due to such tribe in such award. In land claims cases, however, the calculation of the basic value of the land is the same whether the case is concluded in 1950 or 1980 since it is based on the value of the land as of the date of the taking. Interest on such value is paid only with respect to takings in violation of the fifth amendment.

The United States has only recently begun asserting claims under the 1946 act for offsets of expenditures made after 1951, none of which have yet been allowed. If such offsets are allowed, tribes that have claims remaining for final adjudication would thus be, in effect, paying for services that other tribes, those whose cases were concluded at an earlier date, now enjoy without charge. We believe that the disallowance of such offsets, as would be provided under H.R. 7519, is the more equitable approach.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

LARRY E. MEIEROTTO,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF AUGUST 13, 1946 (60 STAT. 1049), AS AMENDED

* * * * * * *

SEC. 2. The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States and Executive Orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit: (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after August 13, 1946, shall be considered by the Commission.

All claims under this chapter may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States.

In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U.S.C., sec. 250), as amended: *Provided*, That expenditures for food rations, or provisions shall not be deemed payments on the claim. The Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat.

984), save expenditures under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award**[.]** *: Provided, That no money or property given to or funds expended gratuitously for the benefit of the claimant after June 30, 1951, shall be set off against any award to the claimant.*

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1284

DIRECTING THE SECRETARY OF THE INTERIOR TO ACQUIRE CERTAIN LANDS FOR THE BENEFIT OF THE MILLE LACS BAND OF THE MINNESOTA CHIPPEWA INDIANS

SEPTEMBER 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1464]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1464), To direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

That the Act of November 2, 1978 (92 Stat. 2452; P.L. 95-571) is amended to read as follows:

"That (a) the Secretary of the Interior is authorized and directed to enter into an agreement to acquire the interest of the fee title holders of record in and to the following described land located in township 43 north, range 27 west, fourth principal meridian, Mille Lacs County, Minnesota—

(1) Government Lot 4, section 28;

(2) Southwest quarter southwest quarter, section 29; and

(3) Southeast quarter southeast quarter, section 29, containing 105.51 acres, more or less.

"(b) Title to such land shall be held by the United States in trust for the Mille Lacs Band of Chippewa Indians as a part of their reservation, subject to any valid existing rights-of-way or other easements.

"SEC. 2. (a) The cost of acquisition of such land shall be an amount which shall be the sum of (1) an amount not less than the value of the land as determined by an appraisal conducted for the Bureau of Indian Affairs by Douglas L. Gibson, SREA, dated January 9, 1980, and (2) the amount agreed to as representing the outstanding debts and obligations of Sherman A. Holbert, also doing business as Indian Bay 1973, Inc., which are directly attributable to the development of such lands, but not to exceed $240,000.

"(b) The Secretary of the Interior shall require in such agreement that all development plans and other work products relating to the development of the

subject land in the possession of Sherman A. Holbert, also doing business as Indian Bay 1973, Inc., shall be transferred to the Mille Lacs Band of Chippewa Indians.

"Sec. 3. (a) The cost of acquisition agreed to in the agreement entered into pursuant to section 1 of this Act shall be treated as if it were a final judgment of the Court of Claims pursuant to section 2517 of title 28, United States Code.

"(b) No part of such acquisition cost shall be considered as an offset against any judgment against the United States in favor of the Mille Lacs Band of Chippewa Indians or any other component band of the Minnesota Chippewa Tribe.".

PURPOSE

The purpose of S. 1464 is to direct the Secretary of the Interior to enter into an agreement to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians.[1]

BACKGROUND

The land to be acquired is composed of three parcels: Government Lot 4 and the southwest quarter of the southwest quarter in section 28 and the southeast quarter of the southeast quarter in section 29, township 43 north, range 27 west, in Mille Lacs County, Minnesota. Government Lot 4 is the critical parcel in terms of this legislation.

The three parcels were included in the original Mille Lacs Indian Reservation established by the Treaty of February 22, 1855. By the Treaty of May 7, 1864, the entire reservation was later ceded to the United States by the Chippewa.

In 1871, Lot 4 was patented to the State of Minnesota under the terms of the Swamp Land Act of September 28, 1850. The State deeded the land shortly thereafter to a railroad company, beginning a chain of title in private ownership.

In 1898, after title to Government Lot 4 had passed into private ownership, Congress enacted into law Joint Resolution No. 40 which "perpetually reserved the above property", Government Lot 4, "as a burial place for the Mille Lacs Indians with the Right to remove and reinter thereon the bodies of those buried on other portions of said former reservation."

Although over a 40-year period numerous efforts were made by the Department of the Interior to reacquire the land from private ownership for the Mille Lacs Band, they were unsuccessful and the land remained in private ownership. In addition, the existence of the 1898 law, reserving the ground as a burial place, was forgotten and became, in effect, a "lost law".

In 1972, S. A. Holbert Enterprises, Inc., a corporation controlled by Sherman A. Holbert, acquired fee title to Government Lot 4 and to the SW¼SW¼ of section 28 at a purchase price of $5,000. In 1978, S. A. Holbert Enterprises acquired the SE¼SE¼ of section 29 at a cost of $10,500. Subsequently, title to the property was transferred to Indian Bay 1973, Inc., another corporation controlled by Mr. Holbert. Mr. Holbert acquired the land for a resort development project which would include a townhouse condominium, recreation vehicle camp site, and a marina.

Mr. Holbert, doing business eventually as Indian Bay 1973, Inc., embarked upon the development project, investing his own financial resources and borrowing extensively. In 1978, the developers sought a building permit from the county. At a February 27, 1978, meeting of the county planning commission to consider the application, a representative of the Mille Lacs Band of Chippewa, accompanied by an official of the Bureau of Indian Affairs, opposed the application on the grounds that Government Lot 4 was held in trust for the Band pursuant to the 1898 law.

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[1] A similar House bill, H.R. 3497 by Mr. Nolan, is pending before the Committee.

The raising of the 1898 law cast a cloud on the title to Government Lot 4, which is integral to any development plans, and brought Mr. Holbert's plans to a halt. On being advised that Federal law prohibited a quiet title action where the United States had a color of title in the subject lands, Mr. Holbert sought legislative relief in the form of a bill to authorize the Secretary of the Interior to acquire his interests in the land for the Mille Lacs Band of Chippewa.

Legislation was passed in the 95th Congress authorizing, but not directing, the Secretary to acquire the land at fair market value. Based upon this law, an appraisal of the land was made and an offer of $146,000 was made to Mr. Holbert in 1979. This offer was, in effect, rejected as being totally inadequate. No further offers were made.

EXPLANATION

As referred to the Committee, S. 1464 amends the 1978 law to require the Secretary to purchase Government Lot 4 and provides that the purchase price of the land shall be an amount which provides just compensation to the owners of the land. The practical effect of the bill would be to require the United States to condemn the land.

The Department of the Interior opposes enactment of the bill because it feels that the Secretary should have the discretion to purchase the land, or not, as the interests of the United States and the Band warrant. In addition, it feels that the proposed acquisition cost is (1) open-ended and (2) exorbitant. The Band opposes the bill not only because it believes that the proposed purchase price is too high but also because it believes it already owns Government Lot 4 under the 1898 law.

While the Committee agreed with some aspects of the position of the Department and the Band and while it concluded that the United States has no legal obligation to Mr. Holbert, it did decide that some moral obligation was owed to Mr. Holbert because of the impact of the "lost Federal law" on his otherwise good faith development efforts.

COMMITTEE AMENDMENT

The Committee adopted an alternative approach which would require the acquisition of the land, but which would leave some discretion with the Secretary; which would established some upper limit in terms of acquisition cost; and which would not result in a burden on the budget of the Bureau of Indian Affairs or the Mille Lacs Band of Chippewa.

As a consequence, the Committee adopted an amendment in the nature of a substitute to S. 1464. The amendment requires the Secretary to enter into an agreement with Mr. Holbert, doing business as Indian Bay 1973, Inc., for the acquisition of his interest in all of the subject lands, not just 25.51 acre Government Lot 4. The land would be acquired by the United States in trust for the Band as a part of its reservation.

The agreement provides that the acquisition cost would be an amount equal to the appraisal value as determined by a 1980 Bureau of Indian Affairs' appraisal plus the actual debts and obligations of Mr. Holbert directly attributable to the development of the subject lands. All of the work product of Mr. Holbert relating to such development would have to be turned over to the Band for such use as it might make of them.

After an acquisition cost is arrived at in the agreement, that amount would be treated as if it were a final judgement of the Court of Claims and would be paid accordingly.

The Committee does not intend that enactment of this legislation will represent a congressional determination of the legal rights and equities of the various parties to the subject lands. In addition, although the Committee does not feel that the United States has any legal obligation to the Band or to Mr. Holbert or his associate arising out of the title to the subject lands, it expects that the agreement will reflect a release of any possible claim or obligation.

Section-by-Section Analysis of S. 1464, as Reported

S. 1464, as reported by the Committee amended the Act of November 2, 1978 (92 Stat. 2452) to provide as follows:

Section 1 (a) requires the Secretary of the Interior to acquire, by agreement, approximately 105.51 acres of land in Mille Lacs County, Minnesota; and (b) provides that such land will be taken by the United States, subject to valid existing rights, in trust for the Mille Lacs Band of Chippewa Indians.

Section 2 provides that the acquisition cost for the lands shall be an amount based upon the appraised value of the land as determined by a 1980 appraisal by the Bureau of Indian Affairs and the actual debts and obligations of the existing owners derived from the abortive development of such lands; and provides that the Secretary, in the agreement require that the existing owners turn over to the tribe all of their work product relating to the development plans for the lands.

Section 3 provides that the acquisition cost, when determined by the agreement, be treated as a final award of the Court of Claims; and bars the acquisition cost of the land from being offset against any judgment in favor of the Band or the Minnesota Chippewa Tribe.

Cost and Budget Act Compliance

While the exact cost of enactment of S. 1464, as reported, would be contingent upon an agreement to be entered into by the Secretary of the Interior, the total cost could not exceed $940,000. The cost analysis prepared by the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 18, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1464, a bill to direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians, as ordered reported by the House Committee on Interior and Insular Affairs, July 30, 1980. The bill directs the Secretary of the Interior to purchase specific parcels of land totaling approximately 105 acres and located in Mille Lacs County, Minnesota.

The costs of this bill would be the sum of the purchase price of acquiring the specified lands and the cost of indemnifying the present owner for expenses attributable to certain development of such lands. Based on specifications in the bill, the total cost of the acquisition of all property cannot exceed $940,000.

Sincerely,

JAMES BLUM
(For ALICE M. RIVLIN, Director).

INFLATIONARY IMPACT STATEMENT

Enactment of S. 1464 would not have any significant inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, clause 2(b)2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of the bill, as amended.

DEPARTMENTAL REPORT

The report of the Department of the Interior, dated April 28, 1980, follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 28, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1464 in the House of Representatives, an act "To direct the

Secretary of the Interior to acquire certain lands for the benefit of the Mille Lacs Band of the Minnesota Chippewa Indians."

We strongly oppose the enactment of S. 1464.

S. 1464 would amend P.L. 95–571 (Act of November 2, 1978; 92 Stat. 2452) which *authorizes* the Secretary of the Interior to purchase for "fair market value" 25 acres of land on the shores of the Mille Lacs Lake in Minnesota to be held in trust for the Mille Lacs Band of Chippewa Indians in Minnesota. The amendment to P.L. 95–571 would *direct* the Secretary to purchase this land for the Mille Lacs Band at a price "which provides just compensation to the owner thereof for his or her interest in such lands."

The 25-acre parcel of land referred to above, known as Government lot 4, is presently owned by Mr. Sherman Holbert, who purchased it after a series of conveyances beginning in 1871 when the United States patented the land to the State to Minnesota. Mr. Holbert had proposed to develop Government lot 4 and the 80 adjacent acres as a recreational area. However, the Mille Lacs Band then asserted a claim to Government lot 4 on the basis of the 1898 Joint Resolution No. 40 of the U.S. Congress (30 Stat. 745). That resolution, enacted after the land had passed out of Federal ownership, "perpetually reserved" Government lot 4 "as a burial place for the Mille Lacs Indians, with a right to remove and reinter thereon" the bodies of those buried on other portions of the former reservation.

Because of the Band's claim, Mr. Holbert has not continued to develop the land as he had planned. Further, he has indicated his belief that Government lot 4 should rightfully belong to the Mills Lacs Band. P.L. 95–571 was intended to rectify the situation but, because of an inability to come to terms on the value of the land, the Secretary has not yet exercised his authority to acquire Government lot 4 for the Band.

We stress, however, that the question regarding the Band's claim on Government lot 4 which interrupted Mr. Holbert's development activities was raised in February 1978. By May 1978, the Interior Department had indicated its belief that the Band had no legal claim to the land and that Mr. Holbert's title was not invalidated by the 1898 Resolution.

In 1978 the 25-acre Government lot 4 was appraised, by an independent appraiser, as having a fair market value of $118,000, or approximately $4,600 per acre and $90 per front foot of lakeshore. That appraisal indicated a total value of $150,000 for the entire 105-acre parcel owned by Mr. Holbert.

Government lot 4 was the key element in Mr. Holbert's development plans. Without it and its lakeshore frontage, access to public roads, and more intensive zoning classification, the remaining 80 acres were estimated in the 1978 appraisal to have a total value of only $3,200. Therefore, severance of the 25 acres would result in a loss valued at $146,800.

A new appraisal was performed last month and we are reviewing it now. This new appraisal would set a value on the land of nearly $700,000. Should such a valuation be established as correct, we are inclined to not proceed with the acquisition because it would not represent a prudent use of funds appropriated for the administration of Indian affairs.

We note that even had P.L. 95–571 not been enacted, the Secretary of the Interior would have the authority to purchase all or any part of the 105-acre parcel that Mr. Holbert wished to sell. The Mille Lacs Band is subject to the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 985; 25 461 *et seq.*) and section 5 of that Act (48 Stat. 985; 25 U.S.C. 465) provides that:

"The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands . . . for the purposes of providing land for Indian reservations.

We understand that language directing the Secretary to acquire the lands involved was included in S. 1464 to require the Secretary to acquire the land by eminent domain regardless of the price set in judicial proceedings which might include compensation in excess of the above-mentioned appraised value of the land. However, we believe that under 40 U.S.C. 257, the Secretary is already authorized to acquire by eminent domain all or any part of lands acquired under the Indian Reorganization Act or P.L. 95–571.

We believe that the Secretary should be permitted to exercise his discretion with respect to the amount and location of land that should be acquired from Mr. Holbert for inclusion in the Mille Lacs Reservation. If Mr. Holbert wishes to sell the 25-acre parcel or the entire 105-acre parcel, the Secretary already has the authority to purchase so much of land as he considers appropriate for inclusion in the Mille Lacs Reservation. However, we do not believe that the facts in this case warrant the acquisition of the land at a price which Mr. Holbert has indicated should be in excess of $1,000,000. Mr. Holbert's decision not to proceed with the development of his land does not give rise to any Federal responsibility to compensate him for the failure of his development to proceed to a successful conclusion.

The Office of Management and Budget has advised that enactment of S. 1464 would not be in accord with the Administration's program.

Sincerely,

Sidney L. Mills,
Acting Assistant Secretary.

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Act of November 2, 1978 (98 Stat. 2452)

[Section 1. (a) The Secretary of the Interior is authorized, if he finds legal title to such lands to be in private ownership, to acquire by purchase the following described lands: Government lot 4, section 28, township 43 north, range 27 west, fourth principal meridian, Mille Lacs County, Minnesota.

(b) Lands acquired by the Secretary pursuant to subsection (a) shall be held by the United States in trust for, and for the benefit and use of the Mille Lacs Band of the Minnesota Chippewa Indians.

Section 2. There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act. The purchase price of said lands shall be an amount equal to their fair market value.]

That (a) the Secretary of the Interior is authorized and directed to enter into an agreement to acquire the interest of the fee title holder of the record in and to the following described land located in township 43 north, range 27 west, fourth principal meridian, Mille Lacs County, Minnesota—

(1) Government Lot 4, section 28;

(2) Southwest quarter southwest quarter, section 29; and

(3) Southeast quarter southeast quarter, section 29, containing 105.51 acres, more or less.

(b) Title to such land shall be held by the United States in trust for the Mille Lacs Band of Chippewa Indians as a part of their reservation, subject to any valid existing rights-of-way or other easements.

Sec. 2 (a) The cost of acquisition of such land shall be an amount which shall be the sum of (1) an amount not less than the value of the land as determined by an appraisal conducted for the Bureau of Indian Affairs by Douglas L. Gibson, SREA, dated January 9, 1980, and (2) the amount agreed to as representing the outstanding debts and obligations of Sherman A. Holbert, also doing business as Indian Bay 1973, Inc., which are directly attributable to the development of such lands, but not to exceed $240,000.

(b) The Secretary of the Interior shall require in such agreement that all development plans and other work products relating to the development of the subject land in the possession of Sherman A. Holbert, also doing business as Indian Bay 1973, Inc., shall be transferred to the Mille Lacs Band of Chippewa Indians.

Sec. 3. (a) The cost of acquistion agreed to in the agreement entered into pursuant to section 1 of this Act shall be treated as if it were a final judgment of the Court of Claims pursuant to section 2517 of title 28, United States Code.

(b) No part of such acquisition cost shall be considered as an offset against any judgment against the United States in favor of the Mille Lacs Band of Chippewa Indians or any other component band of the Minnesota Chippewa Tribe.

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96TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 96-1285

PERMITTING ANY INDIAN TO TRANSFER BY WILL RESTRICTED LANDS OF SUCH INDIAN TO HIS OR HER HEIRS OR LINEAL DESCENDANTS, AND OTHER INDIAN PERSONS

SEPTEMBER 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 2233]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 2223) to permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, after line 2, strike all after the enacting clause and insert the following:

> That the first proviso of section 4 of the Act of June 18, 1934 (48 Stat. 984, 985; 25 U.S.C. 464), is amended by striking the phrase "or any heirs of such members" and inserting, in lieu thereof, the phrase "or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust".
>
> SEC. 2. (a) The second and third provisos contained in the paragraph entitled "Determining Heirs" in the Act of January 24, 1923 (42 Stat. 1185; 25 U.S.C. 377), as amended, and section 2 of the Act of December 24, 1942 (56 Stat. 1080, 1081; 25 U.S.C. 375b), are hereby repealed.
>
> (b) The Secretary of the Interior may cancel any unpaid fees assessed under the provisions repealed by this section.

PURPOSE

The purpose of S. 2223 is to amend certain Federal laws to insure that Indians are permitted to transfer by will their interest in restricted lands to their lineal descendants or to other Indian persons for whom lands may be held in trust.

59-006 O

BACKGROUND

S. 2223 would amend section 4 of the Indian Reorganization Act of 1934 (25 U.S.C. 464) to authorize Indians, who are members of a tribe organized under the 1934 act and who own an interest in trust or restricted property, to devise such interest to their lineal descendants or to other Indian persons for whom the Secretary of the Interior may hold lands in trust.

Section 4 presently places a restriction on the persons or entities to whom an Indian may devise trust property as follows: (1) to the Indian tribe where the land is located; (2) to any member of such tribe; or (3) to any "heirs" of the testator. The Department of the Interior has held that the term "heirs" must be defined in accordance with the law of the State in which the property is located. The term is generally interpreted by state law to mean only those persons who would inherit the property if the person who owns the property dies without a will.

Because of the interplay between the Federal statute and relevant state laws of intestate succession, an Indian who is a member of a tribe organized under the 1934 act may only devise restricted property to the tribe on whose reservation the land is located; to a member of that tribe or to persons who would take the property through intestate succession.

The problem that this interplay created has recently been illustrated in Arizona and noted in Montana, North Dakota, and Idaho. These States have recently amended their laws to conform to the Model Probate Code which provides that the surviving spouse, who is the parent of all of the decedent's children, is the sole heir at law. As a consequence, Indians who are members of tribes in such States may not devise their trust property to their children if the surviving spouse is the parent of all such children.

S. 2223 would eliminate this anomaly by specifically permitting the devise of such interest to lineal descendants notwithstanding any State law defining the term "heir". The bill would further permit the devise of such interest to other Indians, including nonmembers of such tribe, for whom lands may be held in a trust or restricted status. The committee notes, however, that such nonmember Indian and any lands owned by such nonmember Indian on the reservation of the concerned tribe would still be subject to the jurisdiction of such tribe.

COMMITTEE AMENDMENT

The committee adopted an amendment in the nature of a substitute to S. 2223.

Substantively, the substitute eliminates the existing section 1 of S. 2223 containing congressional findings and a declaration.

The substitute adds a new section based upon the language of H.R. 7387, relating to the repeal of certain lands requiring the assessment of fees by the Secretary of the Interior in the probate of Indian estates.

H.R. 7387, introduced by Mr. Udall on request, is based upon draft legislation submitted by the Department of the Interior. The bill would repeal two laws which authorize the Secretary of the Interior to assess fees for the probate of Indian trust estates.

The devise and descent of interests in the trust property of deceased Indians is controlled by Federal law. The law provides that the Secretary of the Interior, generally applying the laws of the State in which the property is situated, will probate the estates of deceased Indians holding interests in trust property.

The law provides that the Secretary must assess fees against the estates for the cost of probating the estate. The act of January 24, 1923 (42 Stat. 1185; 25 U.S.C. 377), as amended, establishes the requirement for deceased members of all tribes, except the Osage Tribe and the Five Civilized Tribes of Oklahoma. Section 2 to the act of December 24, 1942 (56 Stat. 377; 25 U.S.C. 357b) establishes a similar requirement for Five Civilized Tribes.

The administration recommended the introduction and passage of this bill on the grounds that the administrative cost of determining, assessing, and collecting the required fees far exceeds the amount collected.

SECTION-BY-SECTION ANALYSIS

Section 1 amends section 4 of the act of June 18, 1934 (48 Stat. 984) to permit Indians to devise interest in restricted land to their lineal descendants or to other Indian persons.

Section 2 (a) repeals two laws requiring the Secretary of the Interior to assess fees against the estates of Indians for the costs of probate and (b) authorizes the Secretary to cancel any unpaid fees already assessed under such laws.

COST AND BUDGET ACT COMPLIANCE

Enactment of S. 2223, as amended, will represent no cost to the United States and may result in a net saving. The cost analysis prepared by the Congressional Budget Office, which the committee adopts as its own, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 18, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2223 as amended, a bill that would permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants and other Indian persons and that would repeal the existing requirement that the Secretary of the Interior assess fees for probate services in behalf of Indians, as ordered reported by the House Committe on Interior and Insular Affairs, June 30, 1980. The bill establishes, as a policy of Congress, the right of any Indian to devise restricted Indian lands to particular groups of people, irrespective of State intestate succession laws that would otherwise prohibit such action. In addition, the bill repeals two laws that require the collection of specific probate fees and allows the Secretary to cancel any uncollected fees.

Based on this review, it is expected that enactment of this legislation would not result in any net cost to the Federal Government. The Department of the Interior has estimated that the administrative costs of determining, assessing and collecting the fees currently required exceed the amounts collectible. While cancellation of outstanding fees would result in the loss of approximatly $140,000 in revenues, over 70 percent of this amount has been unpaid for over 10 years and is unlikely to be collected in any event. The costs of pursuing any of these debts would exceed potential revenues.

Sincerely,

JAMES BAUM
(For Alice M. Rivlin, Director).

INFLATIONARY IMPACT STATEMENT

Enactment of S. 2223 will have absolutely no inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the committee and no recommendations were submitted to the committee pursuant to rule X, clause 2(b)2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of the bill, as amended.

EXECUTIVE COMMUNICATIONS

The favorable reports of the Department of the Interior on S. 2223 and H.R. 7387, dated June 30, 1980 and July 24, 1980, respectively, and a letter dated May 1, 1980 from the Department of the Interior to the Speaker transmitting draft legislation, which was introduced as H.R. 7387, follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 1, 1980.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is enclosed a draft bill to eliminate the requirement that fees be charged for Indian trust estates probated by the Department of the Interior. A 1976 survey revealed a total of 5,731 unpaid probate fees aggregating $141,971. Of those fees, 4,154 or approximately 72 percent have remained unpaid for 10 or more years.

The first section of the enclosed draft bill would repeal the act of January 24, 1923, as amended (25 U.S.C. 377), which provides for assessment of probate fees ranging from $20 to $75 for Indian trus estates where the value of the estate is $250 or more.

A separate fee schedule ranging from $20 to $30 is prescribed for certain estates of deceased members of the Five Civilized Tribes of Oklahoma which are probated by the Secretary of the Interior. Section 2 of the act of December 24, 1942 (25 U.S.C. 375b) requires the Secretary to collect fees in those cases where the value of the estate is $250 or more. Section 2 of the enclosed draft bill would repeal this provision.

When collected, these small fees are paid into the U.S. Treasury. However, the expense of calculating the fees, maintaining records on unpaid fees, and collecting the fees exceeds the amount collected. Collection of the above 5,731 unpaid probate fees would yield approximately $142,000, an amount scarcely sufficient to pay the salaries of 14 realty clerks for a single year. Imposition of such fees however, is applicable to lands administered by some 79 agencies of the Bureau of Indian Affairs. It is important to remember as well that 72 percent of these unpaid probate fees are 10 or more years old.

The actual cost per case of the settlement of trust estates of deceased Indians was estimated in Fiscal Year 1974 by the Interior Department's Board of Indian Appeals to be $432. While it may have been the original intent of Congress that small probate fees pay for or contribute to the cost of determining heirs to estates of deceased Indians, the length of time required to collect such fees has made this impractical. While examples may be cited of certain fees charged for trust services performed by the Secretary, we would point out that the small probate fee is paid into the U.S. Treasury, and as such, represents the only example of a fee so paid charged for a ministerial function of the trustee. Conversely, the collection of this fee is more time consuming and costly than the amount realized. Therefore, we recommend the repeal of the fee assessment requirements for future cases.

Although we believe the Secretary is authorized under existing law (47 Stat. 564; 25 U.S.C. 386a) to eliminate the present backlog of unpaid probate fees, we have included as section 3 of the enclosed draft bill a specific and simpler authorization for cancellation of the probate fees remaining unpaid.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the administration's program.

Sincerely,

RICK C. LAVIS,
Deputy Assistant Secretary.

Enclosure.

A BILL To eliminate the uneconomic assessment of certain fees assessed by the Secretary of the Interior in connection with the probate of estates of Indians

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of January 24, 1923 as amended (42 Stat. 1185; 25 U.S.C. 377) is repealed.

SEC. 2. Section 2 of the Act of December 24, 1942 (56 Stat. 1801; 25 U.S.C. 375b) is repealed.

SEC. 3. The Secretary may cancel any unpaid fees assessed under the provisions repealed by this Act.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., June 30, 1980.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives,
Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on S. 2223 in the House of Representatives, an act "To permit any Indian to transfer by will restricted lands of such Indian to his or her heirs or lineal descendants, and other Indian persons."

We recommend the enactment of S. 2223 with the amendment suggested herein.

S. 2223 as passed by the Senate would amend section 4 of the Indian Reorganization Act of 1934 (48 Stat. 985; 25 U.S.C. 464) to relax restrictions on the devise of trust or restricted property to permit Indian testators to whom the 1934 act applies to devise their interests in such property to—(1) any of their lineal descendants, or (2) any Indian persons for whom the Secretary of the Interior is authorized to hold land in trust (eg., any member of another tribe).

Under the current provisions of section 4 of the 1934 act, an Indian testator may devise trust or restricted property only to the tribe upon whose reservation the land is located, to any member of such tribe, or to any legal heir of the testator. The restrictions do not apply to Indian lands outside the reservation or to trust or restricted land on the reservations to which the 1934 act does not apply. Such trust or restricted lands may, under the act of June 25, 1910 (36 Stat. 856; 25 U.S.C. 373), be devised to whomever the testator names, subject only to approval by the Secretary of the Interior.

Under section 4 of the 1934 act, devisees under the will of a deceased Indian who are not members of the tribe on whose reservation the devised lands are located can inherit under the will only if they would be legal heirs of the testator—individuals who would inherit the land from the decedent under State inheritance laws if there were no will. An unintended effect of the provision, produced in combination with certain State intestacy laws, has been to prevent an Indian testator's devise of his trust or restricted property to certain lineal descendants. Thus, in States in which a surviving spouse is a decedent's sole legal heir, an Indian testator is unable to devise trust lands to such testator's children or grandchildren, unless they are members of the tribe upon whose reservation the lands are located.

We strongly recommend the enactment of section 2(1) of S. 2223, which would eliminate the circumstances described above by specifically permitting the devise of trust or restricted property to a testator's lineal descendants. We believe the amendment contained in section 2(1) is fully consistent with the policies embodied in the 1934 act and will result in a more equitable administration of the provisions of that act.

We are not, however, prepared at this time to make any substantive recommendation with respect to section 2(2) of S. 2223, which would permit devise of trust or restricted property to "any Indian person who is recognized by the Secretary of the Interior as eligible to hold land in trust." This is apparently intended to apply to Indian indiiduals for whom the Secretary is authorized to hold land in trust—hat is, any member of an Indian tribe. We believe that any recom-nendation with respect to such a provision can be made only after a nore thorough review of current Indian probate law and policy. We recommend instead that both the phrase "and other Indian persons eligible to hold land in trust" in paragraph (2) of the first section and section 2(2) in its entirety be deleted from S. 2223, and that further action on such provisions not be taken at this time.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

RALPH R. REESER,
Acting Deputy Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 24, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 7387, a bill "To eliminate the assessment of certain fees assessed by the Secretary of the Interior in connection with the probate of estates of Indians."

We recommend the enactment of H.R. 7387.

H.R. 7387 is identical, except for minor technical differences, to a draft bill transmitted to the Congress by this Department on May 1, 1980. The bill would eliminate the requirement that fees be charged for Indian trust estates probated by the Department of the Interior. A 1976 survey revealed a total of 5,731 unpaid probate fees aggregating $141,971. Of those fees, 4,154 or approximately 72 percent have remained unpaid for 10 or more years.

The first section of H.R. 7387 would repeal the Act of January 24, 1923, as amended (25 U.S.C. 377), which provides for assessment of probate fees ranging from $20 to $75 for Indian trust estates where the value of the estate is $250 or more.

A separate fee schedule ranging from $20 to $30 is prescribed for certain estates of deceased members of the Five Civilized Tribes of Oklahoma which are probated by the Secretary of the Interior. Section 2 of the Act of December 24, 1942 (25 U.S.C. 375b) requires the Secretary to collect fees in those cases where the value of the estate is $250 or more. Section 2 of the bill would repeal this provision.

When collected, these small fees are paid into the U.S. Treasury. However, the expense of calculating the fees, maintaining records on unpaid fees, and collecting the fees exceeds the amount collected. Collection of the above 5,731 unpaid probate fees would yield approximately $142,000, an amount scarcely sufficient to pay the salaries of 14 realty clerks for a single year. Imposition of such fees however, is applicable to lands administered by some 79 agencies of the Bureau of Indian Affairs. It is important to remember as well that 72 percent of these unpaid probate fees are 10 or more years old.

The actual cost per case of the settlement of trust estates of decreased Indians was estimated in fiscal year 1974 by this Department's Board of Indian Appeals to be $432. While it may have been the original intent of Congress that small probate fees pay for or contribute to the cost of determining heirs to estates of deceased Indians, the length of time required to collect such fees has made this impractical. While examples may be cited of certain fees charged for trust services performed by the Secretary, we would point out that the small probate fee is paid into the U.S. Treasury, and as such, represents the only example of a fee so paid charged for a ministerial function of the trustee. Conversely, the collection of this fee is more time consuming and costly than the amount realized. Therefore, we support the repeal of the fee assessment requirements for future cases.

Although we believe the Secretary is authorized under existing law (47 Stat. 564; 25 U.S.C. 385a) to eliminate the present backlog of unpaid probate fees, we believe that section 3 of H.R. 7387 would provide a specific and simpler authorization for cancellation of the probate fees remaining unpaid.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Tom W. Frederick,
Acting Assistant Secretary.

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Act of June 18, 1934 (48 Stat. 984), as Amended

* * * * * * *

Sec. 4. Except as herein provided, no sale, devise, gift, exchange or other transfer of restricted Indian lands or shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however,* That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such land or interest shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject-matter of the corporation is located, to any member of such tribe or of such corporation [or any heirs of such members] *or any heirs or lineal descendants of such member or any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust: Provided further,* That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgment, is expedient and beneficial for or ompatible with the proper consolidation of Indian lands and for the enefit of cooperative organizations.

ACT OF JANUARY 24, 1923

(42 Stat. 1185, as amended, 25 U.S.C. 377)

* * * * * * *

DETERMINING HEIRS.

For the purpose of determining the heirs of deceased Indian allottees having right, title, or interest in any trust or restricted property, under regulations prescribed by the Secretary of the Interior, $90,000, reimbursable as provided by existing law: [Provided further, That hereafter upon a determination of the heirs to any trust or restricted Indian property of the value of $250 or more, or to any allotment, or, after approval by the Secretary of the Interior, of any will covering such trust or restricted property, there shall be paid by such heirs, or by the beneficiaries under such will, or from the estate of the decedent, or from the proceeds of sale of the allotment, or from any trust funds belonging to the estate of the decedent, the sum of $20 where the appraised value of the estate of the decedent is $250 or more and does not exceed $1,000. Where the appraised value of the estate of the decedent is more than $1,000 and less than $2,000, $25; where the appraised value of the estate of the decedent is $2,000 or more and does not exceed $3,000, $30; where the appraised value of the estate of the decedent is more than $3,000 but does not exceed $5,000, $50; where the appraised value of the estate of the decedent is more than $5,000 but does not exceed $7,500, $65; and where the appraised value of the estate of the decedent is more than $7,500, $75; which amount shall be accounted for and paid into the Treasury of the United States: Provided, That the provisions of this paragraph shall not apply to the Osage Indians nor to the Five Civilized Tribes of Oklahoma.]

ACT OF DECEMBER 24, 1942

(56 Stat. 1080; 25 U.S.C. 375b)

* * * * * * *

[SEC. 2. Prior to distribution of the estate to the individuals found entitled thereto under the provisions of section 1 of this Act [25 USCS § 375a], the Secretary of the Interior shall collect out of the funds or other property involved and pay into the Treasury of the United States a fee of $20 in those cases where the value of the estate is $250 or more but does not exceeed $1,000; a fee of $25 where the value of the estate is more than $1,000 but less than $2,000; and a fee of $30 where the value of the estate is $2,000 or more.]

○

96th Congress
2d Session
HOUSE OF REPRESENTATIVES
Rept. 96-1286
Part 1

COMMUNITY AND STATE ENERGY PLANNING ASSISTANCE

September 4, 1980.—Ordered to be printed

Mr. Staggers, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1280 which on July 29, 1980, was referred jointly to the Committee on Interstate and Foreign Commerce and the Committee on Science and Technology]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1280) to provide assistance to States and to political subdivisions within States to promote national energy objectives, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

(a) Short Title.—This Act may be cited as the "Community and State Energy Planning Assistance Act of 1980".

(b) Table of Contents.—

Sec. 1. Short title.
Sec. 2. Definitions.

TITLE I—COMMUNITY ENERGY PLANNING ASSISTANCE

Sec. 101. Grants to assist local community energy planning.
Sec. 102. Grants to assist implementation of community energy plans.
Sec. 103. Authorization of appropriations.
Sec. 104. Allocation of grants.
Sec. 105. General provisions regarding grants.
Sec. 106. Annual reports.

TABLE II—IMPROVEMENTS IN ADMINISTRATION OF EXISTING STATE ENERGY PLANNING PROGRAMS

Sec. 201. Consolidation and coordination of certain State energy grant programs.
Sec. 202. Reprograming of certain State energy grant funds.

TITLE III—STATE LONG-RANGE ENERGY PLANS

Sec. 301. Grants for State long-range energy planning.
Sec. 302. Authorization of appropriations.
Sec. 303. Allocation of grants.
Sec. 304. General provisions regarding grants.

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) The term "applicant" means any unit of local government applying for a grant under section 101 or 102, or any combination of such units which files an application for such a grant

(2) The term "conservation" means a reduction of inefficient energy consumption or an increase in the efficiency of energy use.

(3) The term "Governor" means the chief executive officer of a State, or the designee of such officer.

(4) The term "renewable resource" means any source of energy that is regenerative or essentially inexhaustible, including solar, wind, low-head hydroelectric, biomass, and ocean systems energy, but not including nuclear fission and fusion materials.

(5) The term "Secretary" means the Secretary of Energy.

(6) The term "State" means each of the 50 States and the District of Columbia.

(7) The term "unit of local government" means the government of a county, municipality, or township, which is a unit of general purpose government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized body of an Indian tribe (as defined in section 412 of the Energy Conservation and Production Act) which governing body performs substantial governmental functions.

TITLE I—COMMUNITY ENERGY PLANNING ASSISTANCE

SEC. 101. GRANTS TO ASSIST LOCAL COMMUNITY ENERGY PLANNING.

(a) GRANTS.—In accordance with this section, section 105, and such regulations as the Secretary may prescribe, the Secretary may commit to make, and make, a grant to any applicant for the costs of preparing a local energy plan.

(b) LOCAL ENERGY PLAN.—(1) For purposes of this section, a local energy plan is a plan of a unit of local government (or a combination of such units of government) which, when implemented, will—

(A) provide for energy conservation;

(B) encourage the use of renewable resources through technologies which are commercially available; or

(C) result in a combination of such conservation and renewable resource usage.

(2) In addition to the requirements of paragraph (1), each local energy plan shall—

(A) include recommendations for conservation of energy used in buildings owned by any unit of local government covered by the plan, as well as energy used in vehicle fleet and equipment operation, street and building lighting, traffic management, heating and cooling, and other municipal services and activities; and

(B) provide for coordination with Federal and State energy use and conservation programs, activities, and objectives.

(c) AMOUNT OF GRANT.—(1) The amount of any grant under this section for any applicant shall not exceed 80 percent of the reasonable costs paid or incurred by the applicant in preparing a local energy plan. The availability of financial assistance to an applicant under other provisions of Federal law shall be taken into account in determining the amount of any grant under this section to that applicant.

(2) The Secretary shall establish criteria for determining the amount of any grant under this section, which criteria shall include the population and other relevant characteristics of the applicant.

(d) APPLICATION; OPPORTUNITY FOR LOCAL PUBLIC COMMENT.—(1) A grant under this section shall be provided only upon the approval by the Secretary of an application containing the information required under subsection (f).

(2) An applicant shall provide for reasonable notice and opportunity for public comment on any application before it is submitted under this section.

(3) During the public comment period, the applicant shall provide a copy of any such proposed application to the Governor of the State in which the unit or units of local government are located.

(e) PERIOD ALLOWED FOR FILING APPLICATION.—(1) No grant may be made under this section unless—

(A) written notice of intent to apply for such grant is filed with the Secretary during the 6-month period beginning on the date which funds are first appropriated for this title; and

(B) the grant application is filed with the Secretary during the 12-month period after notice of intent is filed under subparagraph (A).

(2) The Secretary may extend the periods for filing any notice of intent or application under this subsection.

(f) CONTENTS OF APPLICATIONS.—Any application for a grant under this section for preparation of a local energy plan shall include—

(1) a statement of the purposes of the plan for which a grant is sought under this section, including the types of energy use the applicant anticipates will be considered under the plan;

(2) a commitment that upon the development of the plan the applicant will undertake oversight and review of the plan and any activities taken under the plan, together with such assurances as the Secretary considers appropriate that resources will be available for such purposes;

(3) a statement of the source of funds for covering those costs of preparing the plan which are not covered by any grant under this title;

(4) a summary of the comments on the application received by the applicant under subsection (d)(2); and

(5) such other information as the Secretary may require.

Such application shall be simple and concise in form and shall require only such information as may be necessary to allow the Secretary to efficiently and effectively consider such application.

(g) APPLICATION APPROVAL.—(1) After consideration of any grant application under this section and subject to the availability of funds, the Secretary may approve a grant under this section if the Secretary finds that the requirements of this title regarding such application have been met.

(2) In determining whether to approve any grant application, the Secretary shall take into account whether the unit or units of local government have energy plans and the adequacy of such plans.

(3) Any grant under this section shall be on terms and conditions which the Secretary determines are appropriate and which are consistent with the purposes of this Act. The terms and conditions shall—

(A) provide that the local energy plan will be completed and submitted to the Secretary on the date specified in the grant application (which shall not be later than 24 months after the date of the grant approval);

(B) require that, before submittal to the Secretary, the applicant—

(i) will make copies of the proposed plan available to the public and provide an opportunity (of not less than 60 days' duration) for oral or written public comment, and

(ii) may make such modifications in the plan as the applicant considers appropriate on the basis of the public comments; and

(C) require implementation of any aspects of the plan which do not require substantial cost to the applicant or any person affected by the plan.

(4) The Secretary may extend the date by which any action is required to be taken under paragraph (3).

(h) CONSOLIDATION.—(1) The Secretary shall prescribe procedures which permit and encourage units of local government to consolidate the filing of applications under this section and the preparing of local energy plans covering those units which file consolidated applications.

(2) Under procedures which the Secretary shall prescribe, applications received from units of local government which are within the jurisdiction of another unit of local government may be required to be consolidated with any application of that unit.

(i) REGULATIONS.—The Secretary shall initially prescribe and make effective the regulations required to implement this section not later than 60 days after the date of the enactment of this Act.

SEC. 102. GRANTS TO ASSIST IMPLEMENTATION OF COMMUNITY ENERGY PLANS.

(a) GRANTS.—(1) In accordance with this section, section 105, and such regulations as the Secretary may prescribe, the Secretary may commit to make, and make, a grant to any applicant for the costs of implementing a local energy plan, whether or not prepared pursuant to a grant under section 101, if that plan is approved under subsection (c).

(2) Funds may be provided for only one 12-month period for the implementation of any local energy plan, except that the Secretary may, on request, extend the period of funding. In no event may the period of funding for implementation of any local energy plan exceed 36 months.

(b) AMOUNT OF GRANT.—The amount of any grant under this section for any applicant shall not exceed 50 percent of the reasonable costs paid or incurred by the applicant in implementing a local energy plan. The availability of financial assistance to an applicant under other provisions of Federal law (other than under part H of title III of the Energy Policy and Conservation Act) shall be taken into account in determining the amount of any grant under this section to that applicant.

(c) APPLICATION; PLAN APPROVAL; OPPORTUNITY FOR LOCAL PUBLIC COMMENT.—(1) A grant under this section shall be provided only upon the approval by the Secretary of an application containing the information required under subsection (d).

(2) The Secretary shall prescribe the periods during which applications may be filed and considered under this section.

(3) The Secretary shall not approve any application for a grant under this section unless the Secretary determines—

(A) that the local energy plan involved meets the requirements set forth in section 101(b); and

(B) that reasonable efforts have been or are being made to obtain funding under the provisions of part H of title III of the Energy Policy and Conservation Act for measures under the plan for which funds are available under such provisions.

(4) An applicant shall provide for reasonable notice and opportunity for public comment on any application before it is submitted under this section.

(5) During the public comment period, the applicant shall provide a copy of the proposed application to the Governor of the State in which the unit of local government involved is located.

(d) CONTENTS OF APPLICATIONS.—Any application for a grant under this section for implementation of a local energy plan shall include—

(1) a copy of the local energy plan, together with any related implementation data and information;

(2) a commitment that upon termination of the grant the applicant will continue implementation of the plan and undertake oversight and review of the plan and its implementation, together with such assurances as the Secretary considers appropriate that resources will be available for such purposes;

(3) a statement of the source of funds for covering those costs of implementing the plan which are not covered by any grant under this title;

(4) evidence demonstrating that the actions proposed to be funded under the local energy plan are practicable;

(5) a summary of the comments on the plan received by the applicant under section 101(g)(3)(B), and any modifications in the plan based on such comments, together with a summary of comments received by the applicant on the grant application under this section; and

(6) such other information as the Secretary may require.

Such application shall be simple and concise in form and shall require only such information as may be necessary to allow the Secretary to efficiently and effectively consider such application.

(e) APPLICATION APPROVAL.—(1) After consideration of any grant application under this section and subject to the availability of funds, the Secretary may approve a grant under this section if the Secretary finds that the requirements of this title regarding such application have been met.

(2) In determining whether to approve any grant application under this section, the Secretary shall give priority to those grant applications for implementation of local energy plans—

(A) which, for the funds involved, produce the greatest energy conservation or use of renewable resources;

(B) which will require the least amount of public subsidy or expenditure after the implementation period for which a grant is made under this section; and

(C) which are replicable.

(3) Any grant under this section shall be on terms and conditions which the Secretary determines are appropriate and which are consistent with the purposes of this Act.

(f) REGULATIONS.—The Secretary shall initially prescribe and make effective the regulations required to implement this section not later than 60 days after the date of the enactment of this Act.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There is authorized to be appropriated to the Secretary for the 3 fiscal years beginning after September 30, 1981, not to exceed $420,000,000 for purposes of this title, of which—

(1) not to exceed $200,000,000 shall be available for purposes of grants under section 101 for preparing local energy plans;

(2) not to exceed $200,000,000 shall be available for grants under section 102 for implementing approved local energy plans; and

(3) not to exceed $20,000,000 shall be available for program administration under this title.

(b) LIMITATIONS.—(1) If so specified in an appropriation Act, any amount appropriated pursuant to this title may remain available without fiscal year limitation.

(2) Any authority under this title to enter into a contract, commitment, grant agreement, or other agreement obligating the United States to make outlays pursuant to this title may be exercised only to such extent as may be provided in advance in appropriation Acts.

SEC. 104. ALLOCATION OF GRANTS.

(a) IN GENERAL.—Except as otherwise provided in subsection (b), the Secretary shall allocate the amounts made available under section 103 in any fiscal year for purposes of making grants under sections 101 and 102 as follows:

(1) 80 percent of amounts made available for any fiscal year shall be allocated with respect to the several States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(2) 10 percent of amounts made available for any fiscal year shall be allocated with respect to the several States in such manner as the Secretary determines by rule after taking into account the availability and cost of fuel or other energy used in, and the amount of fuel or other energy consumed by and within the jurisdiction of, such States, and such other factors as the Secretary deems appropriate.

(3) 10 percent of amounts made available for any fiscal year shall be allocated in hardship cases in accordance with section 105(d) for paying grants to the extent such grants exceed the percentage limitations prescribed in sections 101(c) and 102(b).

(b) LIMITATION.—The total amount allocated for any State under subsection (a) in any year for section 101 or for section 102 shall not exceed 10 percent of the total amount allocated for all the States in such year under subsection (a) for that section.

(c) ADMINISTRATIVE EXPENSES.—The Secretary shall prescribe rules limiting the amount of funds committed or granted to an applicant which may be expended for administrative expenses.

(d) REALLOCATION.—Funds allocated under this section for a fiscal year but not obligated in such fiscal year shall be available for reallocation under subsection (a) of this section in the subsequent fiscal year.

SEC. 105. GENERAL PROVISIONS REGARDING GRANTS.

(a) TECHNICAL ASSISTANCE.—Upon request, the Secretary may provide, subject to the availability of personnel and funds, information and technical assistance (including model laws and model local energy plans) to units of local government for purposes of aiding such units in applying for grants under this title and in preparing, implementing, and modifying local energy plans for which grants are provided under this title.

tional amount equal to 7.5 percent of the amount which would otherwise be the entitlement of such parish.]

SEC. 109. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) IN GENERAL.—* * *

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(e) GENERAL TAX EFFORT FACTOR OF UNIT OF LOCAL GOVERNMENT.—For purposes of this subtitle—

(1) IN GENERAL.—* * *

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(3) ADJUSTED TAXES REDUCED.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the adjusted taxes (as determined in accordance with paragraph (2)) of a unit of local government shall be reduced by the amount, if any, by which the adjusted taxes of such unit exceed an amount equal to the product of—

(i) the population of such unit, multiplied by

(ii) 250 percent of the average per capita adjusted taxes for similarly classified units in the State in which such unit is located.

(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to a unit of local government that is the only unit (other than an Indian tribe or Alaskan native village) within the county area in which it is located. A unit shall be treated as located in a county area if all or part of its geographic area is located in such area.

(C) DEFINITION.—For purposes of this paragraph, the average per capita adjusted taxes of similarly classified units within a State means the sum of the adjusted taxes (as determined in accordance with paragraph (2)) for similarly classified units of local government (as determined by the Bureau of the Census for general statistical purposes), divided by the sum of the population of such similarly classified units.

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Subtitle B—Administrative Provisions

SEC. 121.[REPORT ON USE OF FUNDS;] PUBLICATION AND PUBLIC HEARINGS.

[(a) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each fiscal year, submit a report to the Secretary (which report shall be available to the public for inspection) setting forth the amounts and purposes for which funds received under subtitle A have been appropriated, spent, or obligated during such period and showing the relationship of those funds to the relevant functional items in the government's budget. Such report shall identify differences between the actual use of funds received and the proposed use of such funds. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.]

[(b)] *(a)* PUBLIC HEARINGS REQUIRED.—

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(1) HEARING ON PROPOSED USE.—Not less than 7 calendar days before its budget is presented to the governmental body responsible for enacting the budget, each State government or unit of local government which expends funds received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall, after adequate public notice, have at least one public hearing at which citizens shall have the opportunity to provide written and oral comment on the possible uses of such funds before the governmental authority responsible for presenting the proposed budget to such body.

(2) BUDGET HEARING.—Each State government or unit of local government which expends funds received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall have at least one public hearing on the proposed use of such funds in relation to its entire budget. At such hearing, citizens shall have the opportunity to provide written and oral comment to the body responsible for enacting the budget, and to ask questions concerning the entire budget and the relation thereto of funds made available under subtitle A. Such hearing shall be at a place and time that permits and encourages public attendance and participation.

(3) WAIVER.—The provisions of paragraph (1) may be waived in whole or in part in accordance with regulations of the Secretary if the cost of such a requirement would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitle A. The provisions of paragraph (2) may be waived in whole or in part in accordance with regulations of the Secretary if the budget processes required under applicable State or local laws or charter provisions assure the opportunity for public attendance and participation contemplated by the provisions of this subsection and a portion of such process includes a hearing on the proposed use of funds made available under subtitle A in relation to its entire budget.

[(c) *(b)* NOTIFICATION AND PUBLICITY OF PUBLIC HEARINGS; ACCESS TO BUDGET SUMMARY AND PROPOSED USE OF FUNDS.—

(1) IN GENERAL.—Each State government and unit of local government which expends funds received under subtitle A in any fiscal period, the budget for which is to be enacted on or after January 1, 1977, shall—

(A) at least 10 days prior to the public hearing required by subsection [b]*(a)*(2)—

(i) publish, in at least one newspaper of general circulation, the proposed uses of funds made available under subtitle A together with a summary of its proposed budget and a notice of the time and place of such public hearing; and

(ii) make available for inspection by the public at the principal office of such State government or unit of local government a statement of the proposed use of funds, together with a summary of its proposed budget; and

(B) within 30 days after adoption of its budget as provided for under State or local law—

(i) make a summary of the adopted budget, including the proposed use of funds made available under subtitle A, available for inspection by the public at the principal office of such State government or unit of local government; and

(ii) publish in at least one newspaper of general circulation a notice of the availability for inspection of the information referred to in clause (i).

(2) WAIVER.—The provisions of paragraph (1) may be waived, in whole or in part, with respect to publication of the proposed use of funds and the summaries, in accordance with regulations of the Secretary, where the cost of such publication would be unreasonably burdensome in relation to the entitlement of such State government or unit of local government to funds made available under subtitle A, or where such publication is otherwise impractical or infeasible. In addition, the 10-day provisions of paragraph (1)(A) may be modified to the maximum extent necessary to comply with applicable State and local law if the Secretary is satisfied that the citizens of such State or local government will receive adequate notification of the proposed use of funds consistent with the intent of this section.

[(d) REPORT SUBMITTED TO THE GOVERNOR.—The Secretary shall furnish to the Governor of the State in which any unit of local government which receives funds under subtitle A is located, a copy of each report filed with the Secretary as required under subsection (a), in such manner and form as the Secretary may prescribe by regulation.**]**

[(e)**]***(c)* BUDGETS.—The Secretary shall promulgate regulations for the application of this section to circumstances under which the State government or unit of local government does not adopt a budget.

[(f)**]***(d)* REPORT OF THE SECRETARY.—The Secretary shall include with the report required under section 105(a)(2) a report to the Congress on the implementation and administration of this Act during the preceding fiscal year. Such report shall include, but not be limited to, a comprehensive and detailed analysis of—

(1) the measures taken to comply with section 122, including a description of the nature and extent of any noncompliance and the status of all pending complaints;

(2) the extent to which recipient jurisdictions have complied with section 123, including a description of the nature and extent of any noncompliance and of measures taken to ensure the independence of audits conducted pursuant to subsection (c) of such section;

(3) the manner in which funds distributed under subtitle A have been distributed in recipient jurisdictions; and

(4) any significant problems arising in the administration of the Act and the proposals to remedy such problems through appropriate legislation.

[(g)**]***(e)* PARTICIPATION BY SENIOR CITIZENS.—In conducting any hearing required under this section, or under its own budget processes, a State or unit of local government shall endeavor to provide senior citizens and their organizations with an opportunity to be heard prior to the final allocation of any funds provided under the Act pursuant to such a hearing.

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SEC. 123. MISCELLANEOUS PROVISIONS.

(a) ASSURANCES TO THE SECRETARY.—In order to qualify for any payment under subtitle A for any entitlement period beginning on or after January 1, 1973, a State government or unit of local government must establish (in accordance with regulations prescribed by the Secretary, and, with respect to a unit of local government, after an opportunity for review and comment by the Governor of the State in which such unit is located) to the satisfaction of the Secretary that—

(1) * * *

* * * * * * *

(5) it will —

(A) use fiscal, accounting, and audit procedures which conform to guidelines established therefor by the Secretary (after consultation with the Comptroller General of the United States),

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this title (or, in the case of the Comptroller General, as the Comptroller General may reasonably require for purposes of reviewing compliance and operations under subsection (c)(2)), and

(C) make such annual and interim reports **[**(other than reports required by section 121)**]** to the Secretary as he may reasonably require;

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(7) individuals employed by it whose wages are paid in whole or in part out of its trust fund established under paragraph (1) will be paid wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer; **[**and**]**

(8) in the case of a unit of local government as defined in the second sentence of section 108(d)(1)*(A)* (relating to governments of Indian tribes and Alaskan native villages), it will expend funds received by it under subtitle A for the benefit of members of the tribe or village residing in the county area from the allocation of which funds are allocated to it under section 108(b)(4)**[**.**]***;*

(9) it will comply with the requirements of section 121; and

(10) it will comply with the requirements of subsection (c) of this section.

Paragraph (7) shall apply with respect to employees in any category only if 25 percent of more of the wages of all employees of the State government or unit of local government in such category are paid from the trust fund established by it under paragraph (1).

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(c) Accounting, Auditing, and Evaluation.—

(1) Independent audits.—Each State government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after January 1, 1977 (other than a government to which an election under paragraph (2) applies with respect to such entitlement period), shall have an independent audit of its financial statements conducted for the purpose of determining compliance with this title, in accordance with generally accepted auditing standards, not less often than once every 3 years. *For any entitlement period beginning on or after October 1, 1980, such audit shall be conducted not less often than once every two years, and shall, with respect to any period prior to or after such date, include all financial statements for each such period.*

(2) Election.—Paragraph (1) shall not apply to any State or unit of local government whose financial statements are audited by independent auditors under State or local law not less often than every [3] *2* years, if (A) such government makes an election under this paragraph that the provisions of paragraph (1) shall not apply, and (B) such government certifies that such audits under State or local law will be conducted in accordance with generally accepted auditing standards. Such election shall include a brief description of the auditing standards to be applied. Such election shall apply to audits of funds received under subtitle A for such entitlement periods as are specified in such election and as to which such State or local law auditing provisions are applicable.

(3) Series of audits.—If a series of audits conducted over a period not exceeding [3] *2* fiscal years covers, in the aggregate, all of the funds of accounts in the financial activity of such a government, then such series of audits shall be treated as a single audit for purposes of paragraph (1) and paragraph (2).

(4) Entitlements under $25,000.—

(A) The requirements of paragraph (1) shall not apply to a State government or unit of local government for any fiscal period in which such government receives less than $25,000 of funds made available under subtitle A, unless subparagraph (B) applies for such fiscal period.

(B) In the case of a fiscal period which is described in subparagraph (A), if State or local law requires an audit of such government's financial statements, then the conducting of such audit shall constitute compliance with the requirements of paragraph (1).

(5) Waiver.—The Secretary may waive the requirements of paragraph (1) or paragraph (2), in whole or in part, with respect to any State government or unit of local government for any fiscal [period as to which he finds (in accordance with regulations prescribed by the Secretary) (A) that the financial accounts of such governments for such period are not auditable, and (B) that such government demonstrates substantial progress toward making such financial accounts auditable.] *year as to which (in accordance with the regulations prescribed by the Secretary) there is a finding that—*

(A) the financial accounts of such government for such period are not auditable, and that such government demonstrates substantial progress toward making such financial accounts auditable, or

(B) such government has been audited by a State audit agency which does not follow generally accepted auditing standards or which is not independent (in accordance with regulations prescribed by the Secretary), and such State audit agency demonstrates progress toward meeting generally accepted auditing standards or becoming independent.

(6) COORDINATION WITH OTHER FEDERALLY REQUIRED AUDITS.—An audit of the financial statements of a State government or unit of local government for a fiscal period, conducted in accordance with the provisions of any Federal law other than this title, shall be accepted as an audit which satisfies the requirements of paragraph (1) with respect to the fiscal period for which such audit is conducted, if such audit substantially complies with the requirements for audits conducted under paragraph (1). *When practicable, the audit requirements pursuant to the Office of Management and Budget directives for auditing State and local governments and the audit requirements of this title shall be combined.*

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Subtitle C—General Provisions

SEC. 141. DEFINITIONS AND SPECIAL RULES.

(a) SECRETARY.—For purposes of this title, the term "Secretary" means the Secretary of the Treasury or his delegate. The term "Secretary of the Treasury" means the Secretary of the Treasury personally, not including any delegate.

(b) ENTITLEMENT PERIOD.—For purposes of this title, the term "entitlement period" means—

(1) The period beginning January 1, 1972, and ending June 30, 1972.

(2) The period beginning July 1, 1972, and ending December 31, 1972.

(3) The period beginning January 1, 1973, and ending June 30, 1973.

(4) The one-year periods beginning on July 1 of 1973, 1974, and 1975.

(5) The period beginning July 1, 1976, and ending December 31, 1976.

(6) The period beginning January 1, 1977, and ending September 30, 1977.

(7) The one-year periods beginning October 1 of 1977, 1978, and 1979.

(8) The one-year periods beginning on October 1 of 1980, 1981, and 1982.

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SEC. 143. JUDICIAL REVIEW.

(a) PETITIONS FOR REVIEW.—Any **[**State which receives a notice of reduciton in entitlement under section 107(b), and any**]** State or unit of local government which receives a notice of withholding of payments under section 104(b) or 123(b) a determination under section 122(b)(3)(C) that payments be suspended, or a determination under section 122(b)(3)(D) that payments be terminated, may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State or unit of local government is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

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[SEC. 145. STUDY OF REVENUE SHARING AND FEDERALISM.

[(a) STUDY.—The Advisory Commission on Intergovernmental Relations shall study and evaluate the American Federal fiscal system in terms of the allocation and coordination of public resources among Federal, State, and local governments including, but not limited to, a study and evaluation of—

[(1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other Federal Government systems;

[(2) State and local governmental organization from both legal and opertional viewpoints to determine how general local governments do and ought to relate to each other, to special districts, and to State governments in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities;

[(3) the effectiveness of Federal Government stabilization policies on State and local areas and the effects of State and local fiscal decisions on aggregate economic activity;

[(4) the legal and operational aspects of citizen participation in Federal, State, and local governmental fiscal decisions;

[(5) forces likely to affect the nature of the American Federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable, in light of future developments.

[(b) COOPERATION OF OTHER FEDERAL AGENCIES.—

[(1) Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Commission, upon request made by the Chairman, and to the extent permitted by law and within the limits of available funds, such data, reports, and other information as the Commission deems necessary to carry out its functions under this section.

[(2) The head of each department or agency of the Federal Government is authorized to provide to the Commission such services as the Commission requests on such basis, reimbursable and otherwise, as may be agreed between the department or agency and the Chairman of the Commission. All such requests shall be made by the Chairman of the Commission.

[(3) The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

[(c) REPORTS.—The Commission shall submit to the President and the Congress such interim reports as it deems advisable, and not later than three years after the day on which the first appropriation is made available under subsection (d), a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations for legislation as it deems advisable.

[(d) Authorization of Appropriations.—There are authorized to be appropriated to the Commission, effective with the fiscal year beginning October 1, 1977, such sums as may be necessary to carry out the provisions of this section.]

* * * * * * *

ACT OF OCTOBER 20, 1972

AN ACT

To provide fiscal assistance to State and local governments, to authorize Federal collection of State individual income taxes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subtitle A—Allocation and Payment of Funds

SEC. 101. SHORT TITLE.

This title *and title IV* may be cited as the "State and Local Fiscal Assistance Act of 1972".

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TITLE IV—FISCAL ASSISTANCE DURING PERIODS OF RECESSION

SEC. 401. FINANCIAL ASSISTANCE AUTHORIZED.

(a) Payments to State and Local Governments.—The Secretary of the Treasury (hereinafter referred to in this title as the "Secretary") shall, in accordance with the provisions of this title, make payments to State governments, units of local government, and territorial governments for each eligible calendar quarter to help counter the effects of an economic recession.

(b) Authorization of Appropriations.—

(1) Duration of authorization.—Subject to paragraph (2), there are authorized to be appropriated with respect to each eligible calendar quarter, for the purposes of payments under this title during the fiscal years specified in paragraph (2), an amount not to exceed the amount determined for such quarter under paragraph (3). Any amount so appropriated for any such calendar quarter shall remain available for making payments with respect to such quarter until expended.

(2) LIMITATION ON TOTAL AMOUNT.—The total amount which may be appropriated pursuant to this subsection shall not exceed—

(A) $1,000,000,000 for the fiscal year ending September 30, 1981;

(B) $1,000,000,000 for the fiscal year ending September 30, 1982; and

(C) $1,000,000,000 for the fiscal year ending September 30, 1983.

(3) QUARTERLY APPROPRIATION LIMITS.—The amount which may be appropriated pursuant to this subsection with respect to any eligible calendar quarter shall not exceed the lesser of—

(A) the product of the economic decline factor for such quarter multiplied by $10,000,000, or

(B) $300,000,000.

(c) DIVISION BETWEEN TERRITORIAL, STATE, AND LOCAL GOVERNMENTS.—One percent of the amount appropriated under subsection (b) for any calendar quarter shall be allocated to territorial governments under section 412. From the remainder of the amount so appropriated, one-half of such remainder shall be allocated to State governments under section 402 and one-half of such remainder shall be allocated to units of local government under section 403.

(d) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE CALENDAR QUARTERS.—An eligible calendar quarter is—

(A) any calendar quarter which is 1 of 2 consecutive calendar quarters—

(i) during each of which the aggregate real wages and salaries are less than the aggregate real wages and salaries of the calendar quarter immediately preceding the first of such 2 quarters; and

(ii) which are immediately preceded by, concurrent with, or partially preceded by and partially concurrent with, 2 consecutive calendar quarters during each of which the real gross national product is less than the real gross national product of the calendar quarter immediately preceding the first of such 2 quarters; and

(B) any calendar quarter following a calendar quarter which meets the requirements of subparagraph (A) which is—

(i) not a calendar quarter during which the aggregate real wages and salaries equals or exceeds the base period amount; and

(ii) not a calendar quarter following a quarter described in clause (i) of this subparagraph.

(2) AGGREGATE REAL WAGES AND SALARIES.—Aggregate real wages and salaries during any period are the total amount of wages and salaries received during such period, as determined by the Secretary of Commerce for the purpose of computing the gross national product, deflated by the personal consumption expenditure implicit price deflator developed by the Department of Commerce.

(3) REAL GROSS NATIONAL PRODUCT.—The real gross national product is a measure of the value of the volume of national pro-

duction in constant dollars, as determined by the Department of Commerce.

(4) Economic decline factor.—The economic decline factor for any eligible quarter is determined by—

(A) subtracting the aggregate real wages and salaries for such quarter from the base period amount;

(B) dividing the amount determined under subparagraph (A) by the base period amount; and

(C) multiplying the resulting fraction by 1,000, and rounding the product to the nearest whole number.

(5) Base period amount.—The base period amount is the sum of the aggregate real wages and salaries during the national base period divided by two.

(6) National base period.—The national base period is the 2 consecutive calendar quarters immediately preceding the first of the calendar quarters which meets the requirements of paragraph (1)(A). Only one national base period shall be established with respect to each series of consecutive eligible calendar quarters.

SEC. 402. STATE GOVERNMENT ALLOCATION.

(a) Allocation of Funds.—For each calendar quarter for which funds are available under this title, the Secretary shall allocate to each eligible State government an amount which shall bear the same ratio to the amount available for allocation under this section for that quarter (in accordance with section 401(c)) as the product of—

(1) the economic decline factor for such State, multiplied by

(2) the tax effort factor of such State government,

bears to the sum of such products for all eligible State governments.

(b) Definitions.—For purposes of this section—

(1) Eligible state government.—

(A) In general.—A State government is an eligible State government under this section for a calendar quarter if—

(i) such quarter is an eligible State quarter; and

(ii) the base period amount for such State exceeds the aggregate real wages and salaries of such State for that calendar quarter.

(B) Eligible state quarter.—A calendar quarter is an eligible State quarter with respect to a State if—

(i) such quarter is an eligible calendar quarter as defined in section 401(d)(1); and

(ii) such quarter—

(I) is 1 of 2 consecutive calendar quarters, occurring within 1 year prior to the beginning of the first eligible calendar quarter (as defined in section 401(d)(1)) or during any such eligible calendar quarter, during each of which the aggregate real wages and salaries of such State are less than the aggregate real wages and salaries of such State during the calendar quarter immediately preceding the first of such 2 quarters; or

(II) is a quarter following a quarter which meets the requirements of subclause (I) of this clause.

(2) ECONOMIC DECLINE FACTOR.—The economic decline factor for a State for a calendar quarter is a number equal to the number of dollars by which the base period amount for such State exceeds the aggregate real wages and salaries of such State for that quarter.

(3) TAX EFFORT FACTOR OF STATE GOVERNMENTS.—The tax effort factor of a State government is (A) the total taxes taken into account with respect to such State government under section 109(c)(2) of this Act for the most recent reporting year (as defined in subparagraph (B) of such section), divided by (B) the personal income for such State for such year as determined by the Department of Commerce for national income accounts purposes.

(4) BASE PERIOD AMOUNT.—The base period amount of a State is the sum of the aggregate real wages and salaries of such State during its base period divided by two.

(5) STATE BASE PERIOD.—The base period for any State is the 2 calendar quarters immediately preceding the first of the 2 consecutive calendar quarters described in paragraph (1)(B)(ii). Only one base period shall be established for any State with respect to each series of consecutive eligible calendar quarters (as defined in section 401(d)(1)).

(6) AGGREGATE REAL WAGES AND SALARIES OF A STATE.—The aggregate real wages and salaries of a State is the total real wages and salaries taken into account with respect to such State under section 401(d)(2) for each calendar quarter.

SEC. 403. ALLOCATION TO UNITS OF LOCAL GOVERNMENT.

(a) DETERMINATION OF ALLOCABLE AMOUNTS.—

(1) COUNTY AREA ALLOCABLE AMOUNT.—For each calendar quarter for which funds are available under this title, the Secretary shall determine for each eligible county area an allocable amount which shall be an amount which bears the same ratio to the amount available for allocation under this section for that quarter (in accordance with section 401(c)), as the product of—

(A) the economic decline factor for such county area for such quarter, multiplied by

(B) the county area revenue sharing amount,

bears to the sum of such products for all eligible county areas for such quarter.

(2) UNIT OF LOCAL GOVERNMENT ALLOCABLE AMOUNT.—

(A) INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.—If within a county area there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then the allocable amount for such tribe or village for any quarter shall be an amount which bears the same ratio to the total amount to be allocated for such quarter in such county area as the revenue sharing amount of that tribe or village bears to the sum of the revenue sharing amounts of all units of local government (and such tribes and villages) within that county area.

(B) UNITS OF LOCAL GOVERNMENT.—The allocable amount for a unit of local government within a county area for any quarter shall be an amount which bears the same ratio to

the amount remaining for allocation for such quarter in such county area (after subtraction of the allocable amount determined under subparagraph (A)) as the revenue sharing amount of that unit of local government bears to the sum of the revenue sharing amounts of all units of local government within that county area.

(b) ALLOCATION BASED ON ALLOCABLE AMOUNTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the Secretary shall allocate to each unit of local government, Indian tribe, and Alaskan native village an amount equal to the allocable amount determined under subsection (a) with respect to such unit, tribe, or village.

(2) LIMITATION: MINIMUM ALLOCATION.—Notwithstanding paragraph (1), no allocation shall be made to any unit of local government, Indian tribe, or Alaskan native village if the allocable amount determined with respect to such unit, tribe, or village for such quarter is less than $1,000.

(3) DISTRIBUTION OF UNALLOCATED AMOUNTS.—The Secretary shall add any amounts which, as a consequence of paragraph (2), remain unallocated (to units of local government, Indian tribes, and Alaskan native villages in any county area) to the allocation of the county government for such area.

(c) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE COUNTY AREA.—A county area is an eligible county area for a calendar quarter if the economic decline factor for such county exceeds zero.

(2) ECONOMIC DECLINE FACTOR.—The economic decline factor for a county area for a calendar quarter is a number equal to the number of dollars by which the base period amount for such county area exceeds the aggregate real wages and salaries of such county area for that quarter.

(3) BASE PERIOD AMOUNT.—The base period amount of a county area is the sum of the aggregate real wages and salaries of such county area during its base period divided by two.

(4) COUNTY AREA BASE PERIOD.—The base period for any county area is (A) the 2 calendar quarters constituting the State base period (as defined in section 402(b)(5)) of the State within which such county area is located, if such State base period precedes the national base period (as defined in section 401(d)(6)), or (B) the 2 calendar quarters constituting such national base period, if no State base period is established for such State or such State base period is concurrent with or follows such national base period.

(5) AGGREGATE REAL WAGES AND SALARIES OF A COUNTY AREA.—The aggregate real wages and salaries of a county is the total real wages and salaries taken into account with respect to such county area under section 401(d)(2) for each calendar quarter.

(6) COUNTY AREA REVENUE SHARING AMOUNT.—The county area revenue sharing amount is the sum of the amounts determined under section 108 of this Act with respect to the units of local government within such county area for the most recently completed entitlement period, as defined in section 141(b) of this Act.

(7) Unit of local government revenue sharing amount.—The revenue sharing amount of a unit of local government is the amount determined under section 108 of this Act with respect to such unit for the most recently completed entitlement period, as defined in section 141(b) of this Act.

SEC. 404. STATEMENT OF ASSURANCES.

Each State and unit of local government may receive payments under this title only if it has filed with the Secretary, at such time and in such manner as the Secretary prescribes by rule, a statement of assurances. Such rules shall be prescribed by the Secretary not later than 90 days after the date of enactment of this title. The Secretary may not require any State or unit of local government to file more than one such statement during each fiscal year. Each such statement shall contain—

(1) an assurance that the State or unit of local government will—

(A) use fiscal, accounting, and auditing procedures which conform to guidelines established therefor by the Secretary (after consultation with the Comptroller General of the United States); and

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this title;

(2) an assurance that reasonable reports will be furnished to the Secretary in such form and containing such information as the Secretary may reasonably require to carry out the purposes of this title;

(3) an assurance that the requirements of section 405 will be complied with;

(4) an assurance that the requirements of section 406 will be complied with; and

(5) an assurance that the State or unit of local government will spend amounts received under this title only in accordance with the laws and procedures applicable to the expenditure of its own revenues.

SEC. 405. NONDISCRIMINATION.

(a) Prohibition.—

(1) In general.—No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or title VIII of the Act of April 11, 1968, commonly referred to as Civil Rights Act of 1968, shall also apply to any such program or activity.

(2) Exceptions.—

(A) Funding.—The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government demonstrates, by clear and convincing evidence, that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part with funds made available under this title.

(B) Construction projects in progress.—The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

(b) Enforcement and Remedies.—The provisions of subsection (a) of this section shall be enforce by the Secretary in the same manner and in accordance with the same procedures as are required by sections 122, 124, and 125 of this Act to enforce compliance with section 122(a) of this Act. The Attorney General shall have the same authority, functions, and duties with respect to funds made available under this title as the Attorney General has under sections 122 (g) and (h) and 124(c) of this Act with respect to funds made available under title I of this Act. Any person aggrieved by a violation of subsection (a) of this section shall have the same rights and remedies as a person aggrieved by a violation of subsection (a) of section 122 of this Act, including the rights provided under section 124(e) of this Act.

SEC. 406. LABOR STANDARDS.

All laborers and mechanics employed by contractors on all construction projects, 25 percent or more of the cost of which are paid out of payments under this title, shall be paid wages at rates not less than those prevailing on similar projects in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–5). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

SEC. 407. GOVERNMENTAL DEFINITIONS AND RELATED RULES.

(a) State.—The term "State" means any of the several States.

(b) Units of Local Government.—The term "unit of local government" has the meaning set forth in section 109(d)(1) of this Act. Such term also means, except for purposes of sections 403 (a) and (b) and 408, the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions.

(c) Certain Areas Treated as Counties.—In any State in which any unit of local government (other than a county government) constitutes the next level of government below the State government level, then, except as provided in the next sentence, the geographic area of such unit of government shall be treated as a county area (and such unit of government shall be treated as a county government) with respect to that portion of the State's geographic area. In any State in which any county area is not governed by a county government but contains two or more units of local government, such units shall not be treated as county governments and the geographic areas of such units shall not be treated as county areas.

(d) Townships.—The term "township" includes equivalent subdivisions of government having different designations (such as "towns"), and shall be determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes.

(e) Units of Local Government Located in Larger Entity.—A unit of local government shall be treated as located in a larger entity if part or all of its geographic area is located in the larger entity.

(f) Only Part of Unit Located in Larger Entity.—If only part of a unit of local government is located in a larger entity, such part shall be treated for allocation purposes as a separate unit of local government, and all computations shall, except as otherwise provided in regulations, be made on the basis of the ratio which the estimated population of such part bears to the population of the entirety of such unit.

(g) Boundary Changes, Governmental Reorganization, Etc.—If, by reason of boundary line changes, by reason of State statutory or constitutional changes, by reason of annexations or other governmental reorganizations, or by reason of other circumstances, the application of any provision of this section to units of local government does not carry out the purposes of this title, the application of such provision shall be made, under regulations prescribed by the Secretary, in a manner which is consistent with such purposes.

(h) Treatment of the District of Columbia.—For purposes of this title the District of Columbia shall be treated as a county area which has no units of local government (other than itself) within its geographic area.

SEC. 408. PAYMENTS.

(a) In General.—From the amounts allocated to State governments, units of local government, and Indian tribes and Alaskan native villages under sections 402 and 403, the Secretary shall—

(1) not later than 30 days after the receipt from the Secretary of Commerce of State-level data regarding the calendar quarter following an eligible calendar quarter described in section 401(d)(1), pay to each State government which has filed a statement of assurances under section 404 an amount equal to the amount allocated to such State government under section 402 for such eligible calendar quarter; and

(2) not later than 30 days after the receipt from the Secretary of Commerce of county-area data regarding an eligible calendar quarter described in section 401(d)(1), pay to each unit of local government and Indian tribe and Alaskan native village which has filed a statement of assurances under section 404 an amount equal to the amount allocated to such unit, tribe, or village under section 403 for such eligible calendar quarter.

(b) Adjustments.—Payments under this title may be made with necessary adjustments on account of overpayments or underpayments under this title.

(c) Certification of Data.—The Secretary of Commerce shall, as soon as may be practicable after the conclusion of each calendar quarter, provide to the Secretary the data required for purposes of sections 401(d)(2), 402(b)(6), and 403(c)(5).

SEC. 409. WITHHOLDING.

Whenever the Secretary, after affording reasonable notice and an opportunity for a hearing to any State government or unit of local government, finds that there has been a failure to comply substantially with any assurance set forth in the statement of assurances of that State government or unit of local government filed under section 404, the Secretary shall notify that State government or unit of local government that further payments will not be made under this title until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made under this title.

SEC. 410. REPORTS.

(a) Quarterly Reports.—The Secretary shall report to the Congress as soon as is practical after the end of each calendar quarter during which payments are made under the provisions of this title. Such report shall include information on the amounts paid to each State government and unit of local government and a description of any action which the Secretary has taken under the provisions of section 409 during the calendar quarter.

(b) Annual Report.—The Secretary shall report to Congress as soon as is practical after the end of each fiscal year during which payments are made under the provisions of this title. Such reports shall include detailed informaiton on the amounts paid to State governments and units of local government under the provisions of this title and any actions with which the Secretary has taken under the provisions of section 409.

SEC. 411. ADMINISTRATION.

(a) Rules.—The Secretary is authorized to prescribe, after consultation with the Secretary of Commerce, such rules as may be necessary for the purpose of carrying out his functions under this title. Such rules shall be prescribed by the Secretary not later than 90 days of the date of enactment of this title.

(b) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary for the administration of this title.

SEC. 412. ALLOCATION FOR PUERTO RICO, GUAM, AMERICAN SAMOA, AND THE VIRGIN ISLANDS.

(a) Allocations.—

(1) In General.—For each calendar quarter for which funds are available under this title, the Secretary shall allocate to each territorial government an amount equal to the product of the amount available for allocation under this section multiplied by the applicable territorial percentage.

(2) Applicable territorial percentage.—For the purposes of this subsection, the applicable territorial percentage of a territory is equal to the quotient resulting from the division of the territorial population of such territory by the sum of the territorial population for all territories.

(3) Definitions.—For purposes of this section—

(A) The term "territorial government" means the government of a territory.

(B) The term "territory" means Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(C) The term "territorial population" means the most recent population for each territory as determined by the Bureau of Census.

(b) PAYMENTS TO LOCAL GOVERNMENTS.—The governments of the territories shall make payments to local governments within their jurisdiction from sums received under this section as they deem appropriate.

(c) APPLICATION OF GENERAL PROVISIONS.—The provisions of sections 404, 405, 406, and 409 shall apply to the funds authorized under this section.

ADDITIONAL VIEWS OF HON. JACK BROOKS

The Government Operations Committee's action in deleting the State share of revenue sharing in H.R. 7112 is an implicit recognition of the fact that a rationale for this program no longer exists and that it is an expensive experiment we can no longer afford. At the same time, H.R. 7112's extension of the program for local governments for another three years demonstrates the difficulty Congress faces in trying to halt the outflow of Federal funds, and the unhealthy dependency of local governments on these funds. Although I did not formally dissent on the vote on H.R. 7112, I want to take this opportunity to reiterate my serious reservations about this ill-conceived program.

An initial selling point for revenue sharing was the idea that the Federal government's revenue raising resources were more efficient and more equitable than those of State and local governments and that the Federal government, therefore, should share the benefits of its tax collecting machinery by passing a portion of its surplus through to State and local governments. But, even by the time the program went into effect in 1972, it was clear that this academic theory had no application in the real world. The Federal budget was in deficit by nearly $30 billion in that year and has been in deficit every year since then. The national debt was $437 billion that year and has expanded every year since, heading toward an almost inconceivable trillion dollars. It is obvious now that the magic ingredient making revenue sharing possible was not a more efficient Federal tax collection mechanism, but rather the Federal government's ability to pile up gargantuan deficits without meaningful legal restriction (but with the side effect of contributing to an inflation rate that has run as high as 18 percent in the past year).

I have previously expressed the concern that the revenue sharing program posed a fundamental threat to the historic relationship between Federal, State, and local levels of government. Recent operation of the program has done nothing to allay that concern. First, the program has violated the principle that governing bodies should be responsible for raising the money that they spend, as a means of forcing them to justify such expenditures to the electorate. A cornerstone of our governing system has been accountability. Revenue sharing has stood accountability on its head by consciously placing taxing responsibility for the program in one body—the Congress—and spending authority in another—state and local governments. (This distortion has led to the unintended irony of state and local legislatures inundating the Congress over the past two years with two types of petitions relating to Federal fiscal affairs: one demanding that the Federal government put its house in order by balancing its budget, and the other pleading for renewal of revenue sharing for both state and local governments at full funding levels.)

In addition, this program, which was promoted as a "no strings attached" means of decentralizing power, instead has made recipient governments more and more dependent on the Federal government. Revenue sharing has become a vital and indispensable component of many governments' operating budgets. Even when it was manifest this year that fiscal responsibility should dictate elimination of this program, local governments warned that their economic survival rested on revenue sharing—and their arguments carried the day. We should be able to see now that revenue sharing has made local governments supplicants at the feet of the Federal government, a dangerous relationship that ill serves the interests of both levels of government and the people they represent.

The Government Operations Committee has taken a worthwhile step in H.R. 7112 in discontinuing State participation in this program. I regret that we were unable to take the logical next step of terminating the entire program. I hope that during the three years local governments will continue to receive funds through the enactment of this bill, both they and the Congress will seriously examine its failings and make this extension the last.

JACK BROOKS.

ADDITIONAL VIEWS OF HON. ANDREW MAGUIRE

While I support the program of revenue sharing as reported out by the Government Operations Committee, I believe that the Committee failed to address a serious inequity in the process by which funds are allocated.

One of the formula elements used to determine the distribution of revenue sharing monies is "tax effort". This component was supposed to measure the extent to which a jurisdiction is taxing its residents in order to provide local services. This was included so that Federal dollars would flow more freely to districts as their ability to raise revenue on their own diminished. However, since tax effort is defined simply as total taxes raised divided by total personal income, there is a serious flaw in the formula.

Many areas are able to levy taxes the burden of which are borne by residents of another district. This is most apparent with the imposition of severance taxes on mineral resources consumed out-of-state, and sales taxes falling on tourists and commuters. Since the current tax effort factor makes no distinction between taxes borne by residents of a jurisdiction and those "exported", some governments have a double advantage. They are able to raise high revenues (through taxes levied on residents of other states) with very little strain on local taxpayers, and at the same time, their tax effort is rewarded by higher revenue sharing payments. This results in an inefficient distribution of funds.

In order to address this problem, I introduced an amendment during the full Committee mark-up of this bill. My amendment would exclude from the tax effort component all exported taxes regardless of their source. In this way, states would only receive credit for taxes that fall on their residents. Although this amendment lost in a close vote, I am optimistic that this inequity will be redressed on the floor of the House.

ANDREW MAGUIRE.

ADDITIONAL VIEWS OF HON. JOHN W. WYDLER (CONCURRED IN BY HON. CLARENCE J. BROWN, HON. ROBERT S. WALKER, HON. OLYMPIA J. SNOWE, AND HON. WAYNE GRISHAM)

I believe that state governments should be included in any general revenue sharing program. H.R. 7112, as reported, contains funding only for local governments. I believe this decision was mistaken. Therefore, I plan to offer a compromise amendment on the floor to restore state government funding.

This compromise approach was at one time contained in the Committee bill, but was later taken out upon reconsideration by a vote of 20 to 15.

The compromise amendment would do the following:

> Authorize state government participation in fiscal years 1982 and 1983.
>
> Make any state share contingent upon the annual appropriations process, thereby eliminating the entitlement which exists for state governments under the current law.

In deference to the fiscal constraints imposed by Congress under the first budget resolution, no funding would be made available to state governments for fiscal year 1981. This is a reasonable compromise which Members of all philosophies can support.

There is good reason to continue some form of state revenue sharing. Revenue sharing is one federal program which works, and works well. State revenue sharing is an integral component of that program, and it makes little sense to abandon it. In recommending the elimination of state revenue sharing, the Administration has ignored the advice not only of the Advisory Commission on Intergovernmental Relations (ACIR) which studies these problems, but of its own group in OMB which has examined problems existing in our $92 billion federal aid system to states and localities. it has been recommended that programs could be operated more efficiently and economically if we resist the temptation to constantly add individual grant programs to the already overburdened grant system. Yet, many in Congress continue in their attempts to add additional categorical grant programs to the 496 now being funded each year. The rules, regulations and bureaucracy spawned by these programs cost the taxpayers more each year. Revenue sharing, on the other hand, costs only one-tenth of one percent of total program costs to administer. It is run by one of the smallest bureaucracies in the federal establishment. It has few regulations. GRS costs have, in fact, risen only 12 percent since 1975, a much lower rate than any other major domestic program. In sum, it is a model program.

Critics have argued that in light of the need for a balanced budget, the federal government can no longer afford to finance the $2.3 billion annual cost of state revenue sharing. In addition, it is contended that the states collectively enjoy a comfortable financial position, no longer requiring revenue sharing payments. Further, states can tap the same source of revenue through their own state income tax collections, without asking the federal government to raise these monies through its tax collections.

On the other hand, there is ample evidence to suggest that state governments should remain in any general revenue sharing program. Elimination of the states will only serve to weaken intergovernmental cooperation by lessening the state role in local affairs. Most importantly, however, by focussing its ire on state revenue sharing, the Congress is actually ignoring the root cause of the bloated federal aid budget; namely the amalgam of 496 separate categorical aid programs. State and local officials would much prefer that cuts be made in those areas of the budget. Indeed, it is probable that state and local officials would be amenable to larger dollar cuts in categoricals in order to save revenue sharing.

At the heart of this controversy is the financial condition of the state governments. It is argued that state governments are financially healthy and should not be given additional revenue at a time when the federal government is running budget deficits. These assumptions can be challenged on a number of grounds.

The first point to keep in mind when evaluating state government finances is that budget surplus figures, when viewed singly, tend to mask some important overall considerations. Proponents of elimination of the state share often point to aggregate budget figures to prove that states should not receive revenue sharing. For instance, during the consideration of the Budget Resolution in the House last year, the point was often made that since state governments projected a $4.3 billion surplus for fiscal year 1980 it made little sense for the federal government to provide states with $2.3 billion in general revenue sharing. Despite a degree of superficial appeal, this point lacks credence since the majority of fund balances resided in the coffers of just five states (Texas, California, Florida, Alaska and Wisconsin). Other state budgets were not nearly as secure. (Ironically, in the wake of Proposition 13, California no longer boasts a healthy surplus. In fact, the projected surplus for that state this year is only $12 million compared to over $7 billion just three years ago.)

If revenue sharing payments had actually been terminated to the states, a number of governments would have been placed in a deficit position. Further, the surplus argument ignores the fact that 48 states are constitutionally required to have balanced budgets. Prudent budgeting requires that a certain portion of a given state's budget, usually 4-6 percent, be retained as part of a contingency fund to avoid the possibility of a deficit any time during the fiscal year.

In addition, some Governors have also pointed out that the aggregate budget surplus figures do not include certain unfunded pension fund obligations currently owed by the states. These unfunded liabilities are estimated to be approximately $175 billion.

Second, there is the question of "need".

Some say that only "needy" governments should receive revenue sharing aid. This point of view ignores the fact that need was never considered to be a criteria for program eligibility. While need certainly helps determine the ultimate governmental allocations, it does not decide which governments are, in fact, eligible. All general purpose state and local governments were made eligible because each was considered to be important to our concept of federalism.

Federalism? While perhaps shocking to some, principles of federalism should continue to define the nature of federal/state/local relations.

Notions of federalism are best embodied in the revenue sharing program. This point is too often overlooked by Congress. The federal government seeks to accomplish much through state and local governments. Look down the list. States carry out national responsibilities legislated by Congress. The federal government doesn't administer welfare or medicaid; nor build roads and water pollution facilities; nor run the various social and education programs which the Congress has deemed necessary. States do. We rely on the states and their localities. Congress could not implement these programs unless the states and localities were willing and able to work in a partnership with the federal government in serving our citizens. In addition, revenue sharing is a program which allows states and localities to adjust to the various federal mandates to provide for the handicapped, the poor and others. Yet, many in Congress stand today poised to strike vindictively at the states and eliminate the only source of flexible funding they receive from Washington. Such action ignores the very desirable notion of cooperation between governments in a mature federal system.

Consider the proper role of the states in encouraging aid to localities. The trend is clear. States are doing more for their localities than ever before. This is only right. It is also more desirable for localities to look first at their state capitals before coming to Washington for aid. At present, states contribute much more to their localities than does the federal government directly. For instance, in 1977 direct federal aid to localities alone totaled $16.6 billion.

On the other hand, states spent from their own resources a total of $78.1 billion to help localities. This amount constituted a 272 percent increase from the $20.9 billion spent in 1965. In some cases, revenue sharing funds are used directly to finance a variety of local aid programs. In other cases, revenue sharing funds are not dedicated to local assistance purposes but form part of the overall state revenues that make substantial programs of local assistance possible.

The Governors contend that states are becoming more responsive to local needs. Since all localities are creatures of states anyway, such responsiveness might well be expected. However, the trend towards direct federal aid to localities may hamper state/local cooperation, if localities become too accustomed to turning to Washington to solve their problems. Cutting state revenue sharing may inadvertently foster this trend.

Treasury Secretary Miller testified recently that about $1.4 billion of the state share is now being passed through to localities. That is about 60 percent of the total state share. Cutting the state share will unquestionably reverse this desirable trend, causing the federal government additional problems in the long run. Is this what the federal government should encourage? I think not.

Why do state surpluses matter when state governments will continue to be eligible for a great number of other programs which are not as effective? While eliminating state revenue sharing would undoubtedly be easier than cutting categorical spending, one wonders why the best program should be the first one eliminated. Is the program a cause of our present budgetary predicament, or is it simply a scapegoat for Congressional inability to control spending in other areas?

The revenue sharing program, unlike other programs, has been controllable. Since reenactment in 1976, program spending has increased by only 12 percent. Compare general revenue sharing with a host of other federal programs listed below over the last five years.

Program:	*Percent increase, 1975–80*
UMTA	247
Subsidized housing	156
CETA	152
Health services	81
Medicaid	81
EPA water programs	78
Unemployment trust funds	66
Elementary and secondary education	51
Federal-aid highways	48
Social services	48
Public assistance (AFDC)	31
General revenue sharing	12

Source: House Budget Committee.

Is it not ironic that the most stable and economical government program is one of the first to be chosen for sacrifice on the altar of fiscal responsibility?

Opponents of revenue sharing also criticize the entitlement funding status of the program. Such criticism is misdirected.

Unlike other entitlement programs, revenue sharing serves a specified number of governments, over a limited period of time, distributing an exact amount of money. It is clearly not been of much import when considering the size of the federal deficit.

However, other entitlement programs have increased in dramatic fashion. For instance, federal health expenses have grown from about $1 billion in 1965, the year Medicare was enacted, to $50 billion in 1980 for Medicare-Medicaid. Entitlements, such as Social Security, have been tied to the Consumer Price Index, resulting in annual upward adjustments. Conversely, as shown above, general revenue sharing has been among the most controllable of federal programs. In fact, because of inflation, the revenue sharing dollar in 1980 is worth 40 percent less in real terms than the revenue sharing dollar of 1972. It is clear that revenue sharing has not kept pace with inflation. Yet, the program is being singled out for elimination, though it has contributed little to federal budgetary growth.

The fact is that general revenue sharing helps people. By eliminating the state governments, the Committee bill hurts vitally needed programs and services which help people.

Over half of the money which states receive is earmarked for education and social service programs. For instance, 19 states set aside all or a substantial portion of their revenue sharing payments for educational purposes, totaling $744 million, or 32 percent, of all revenue sharing payments to states. Thirteen states earmark all or a portion of the revenue sharing funds they receive for a variety of social services. The funds spent for social services total $588 million, or 26 percent of all revenue sharing payments to states. In addition, significant amounts of state revenue sharing funds fund necessary capital improvements, pension benefits and tax rebates. The compromise I will propose on the House floor would not restore the states to their current status under the program. However, it will allow the next Congress to fund a state program if it chooses to do so. We should not foreclose that option now.

With the current nationwide resentment against big government, one might wonder why the state revenue sharing program is subject to such heated attack from some in Congress. The answer is simple: Revenue sharing stands for the proposition that all wisdom does not necessarily reside in Washington; that perhaps state and local officials, being closer to the situation, can better determine ways to solve local problems; that Washington does not always know best. Now, one can see that these ideas may not be popular among those in Washington who like to tell the country what, when, and how to do just about everything. But, the program is certainly popular with state and local officials. Invariably, we are told that revenue sharing makes more sense than any other program of "aid" now directed to states and localities.

Obviously, if the federal budget is to be balanced, cuts must be made. Rather than simply cutting back state revenue sharing, would it not make more sense to pare back those programs which extend the power of the Washington bureaucracy over state and local affairs? Why not cut those which are not only costly to administer, but also are bound with rules, regulations and red tape?

Or, will Congress choose to eliminate a major part of the one federal aid program which works? We will soon know the answer.

John W. Wydler.
Clarence J. Brown.
Robert S. Walker.
Olympia J. Snowe.
Wayne Grisham.

ADDITIONAL VIEWS OF HON. ROBERT S. WALKER (CONCURRED IN BY HON. JOHN N. ERLENBORN, HON. THOMAS N. KINDNESS, HON. CLARENCE J. BROWN, HON. ARLAN STANGELAND, HON. M. CALDWELL BUTLER, HON. JIM JEFFRIES, AND HON. WAYNE GRISHAM)

We oppose Title II of this legislation which establishes the countercyclical assistance program.

This program would authorize up to $1 billion for each of the next three fiscal years to be distributed in times of economic recession. These monies were authorized despite the fact that no room exists in the 1981 Budget Resolution to fund this new program.

Frankly, we are astonished that a majority of this Committee could adopt a new spending program for fiscal year 1981 when monies are not available in the budget resolution.

When a similar proposal was adopted by this Committee last December (H.R. 5980), we warned that this program threatened to raise the deficit which was then projected to be approximately $30 billion. Now, the budget deficit for this year is estimated to be in the $60 billion range. Despite this, the Committee has shown little reticence about adding more money to the deficit. We are amazed.

Beyond the question of fiscal responsibility, we have grave doubts as to the desirability of this type program. Even though this legislation may offer a somewhat better way of allocating countercyclical money than the traditional unemployment-based programs, we doubt whether this effort will effectively counter the economic recession.

The sponsors of this measure believe that this type assistance is necessary to shore-up depleted state and local treasuries during times of recession. As stated in our dissenting views to H.R. 5980 last December, we doubt the efficacy of such proposals. Then we stated that:

The traditional justification for a countercyclical aid program to state and local governments has recently been criticized. In the past it was felt that during times of economic recession it would be necessary to insure that the fiscal actions of states and localities did not run counter to the anti-recessionary policies of the Federal Government. It was said that during national recession, states and localities, faced with increased economic difficulty, would be forced to cut vital services and reduce employees. Largely as a result of such concerns, the Congress twice enacted countercyclical legislation in recent years.

However, a recent study conducted by the Advisory Commission on Intergovernmental Relations concluded that in fact "during each economic downswing since World War II, state and local fiscal behavior was 'correct' (countercyclical) because it added to aggregate demand." Stated differently, state and local governments did not act as a drain on the economy by raising taxes and cutting expenditures during economic downswings. In fact, the ACIR concluded that "state and local governments have acted as a stabilizing force over these recessions" since World War II. States and localities were able to sustain themselves financially because surpluses were tapped to make up for any revenue loss.

Another troublesome consideration concerns governmental efficiancy. If, indeed, states and localities are forced to reduce services and expenditures during times of economic recession, such prospect may not really be undesirable. Presumably, such governments would seek to pare away those services and jobs which are of less priority. In fact, it may take an economic recession to force such governments to "trim the fat". Countercyclical funding will have the undesirable effect of subsidizing governmental inefficiencies, providing no incentive to reduce waste.

Those governments which always seem to be on the brink of financial disaster would, of course, be benefitted by any financial transfusion available. The question of policy for the Congress to consider, however, is whether a national program, spending millions of dollars to thousands of governments, is really the best way to help those places which are truly distressed? Again, we think not.

This effort is typical of the big-spending, big-government policies that have been tried again and again in the past. This effort is typical of how the Administration and the Democratic majority that has controlled this Congress for the past twenty-five yearts have responded to national problems. Rather than seeking to spur those complex economic forces that propel the economic system in this country through the use of incentives, the Democrats turn once again to the policy of subsidy.

Rather than confronting the dire need for properly focused tax cuts to spur savings, investments, and job creation, the Democrats simply make the printing presses work harder in order to shovel money at the problems of unemployment and recession.

It is a pity that the American taxpayers must once again bear the cost of such futile economic tinkering.

Robert S. Walker.
John N. Erlenborn.
Thomas N. Kindness.
Clarence J. Brown.
Arlan Stangeland.
M. Caldwell Butler.
Jim Jeffries.
Wayne Grisham.

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1278

MISCELLANEOUS REVENUE ACT OF 1980

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

TOGETHER WITH ADDITIONAL VIEWS

ON

H.R. 7956

SEPTEMBER 4, 1980.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1278

MISCELLANEOUS REVENUE ACT OF 1980

SEPTEMBER 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7956]

The Committee on Ways and Means, to whom was referred the bill (H.R. 7956) to make various changes in the tax laws, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of page and line numbers of the introduced bill) are as follows:

Page 2, line 22, strike out "such individuals" and insert in lieu thereof "one or both of such individuals".

Page 8, line 6, strike out "natural".

Page 8, strike out lines 7 through 13 and insert the following:

> "(iii) the preservation of open space (including farmland and forest land) where such preservation is—
>
> "(I) for the scenic enjoyment of the general public, or
>
> "(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,
>
> and will yield a significant public benefit, or

Page 15, strike out lines 18 through 20 and insert the following:

(c) **EFFECTIVE DATES.**—

(1) Subsection (a).—The amendments made by subsection (a) shall apply to all taxable years to which the Internal Revenue Code of 1954 applies.

(c) EFFECTIVE DATES—Continued

(b) Subsection (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1969.

Page 16, line 4, strike out "January 1, 1975" and insert in lieu thereof "January 1, 1974".

Page 16, line 6, strike out "calendar year 1975" and insert in lieu thereof "calendar year 1974, 1975".

Page 16, line 9, strike out "calendar year 1975" and insert in lieu thereof "calendar year 1974, 1975".

Page 27, after line 4, insert the following:

(b) CONFORMING AMENDMENTS.—

(1) The last sentence of section 401(a)(4) is amended by striking out "section 410(b)(2)(A)" and inserting in lieu thereof "section 410(b)(3)(A)".

(2) Subparagraph (B) of section 401(d)(3) is amended—

(A) by striking out "section 410(b)(2)(C)" and inserting in lieu thereof "section 410(b)(3)(A)", and

(B) by striking out "section 410(b)(2)(C)" and inserting in lieu thereof "section 410(b)(3)(C)".

(3) The last sentence of section 408(k)(2) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)".

(4) Clause (i) of section 408(k)(3)(B) is amended by striking out "section 410(b)(2)" and inserting in lieu thereof "section 410(b)(3)".

Page 27, strike out lines 5 and 6, and insert the following:

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning

I. SUMMARY

Section 101—Treatment of Certain Community Income for Spouses Living Apart

Under present law, income considered community property under State law is taxed in equal shares to a husband and wife. Generally, under this provision, community property laws are to be disregarded for income tax purposes when the spouses have lived apart for the entire year and no portion of the income earned by one spouse has been transferred to the other spouse. The provision is intended to provide relief for abandoned spouses who are presently taxed on a portion of the income earned by the other spouse.

Section 102—Amortization of Business Startup Costs

Under present law, costs incurred prior to the commencement of a business normally are nondeductible because they are not incurred in carrying on a trade or business. These startup or preopening costs must be capitalized and often cannot be depreciated or amortized because no ascertainable useful life can be established for these costs. However, the capitalized costs may be recovered for purposes of measuring gain or loss upon the disposition or cessation of the business.

Under this provision, qualifying business startup or investigatory expenses may, at the election of the taxpayer, be amortized over a period of not less than 60 months.

Section 103—Charitable Deduction for Certain Contributions of Real Property for Conservation Purposes

This provision revises the provisions of current law allowing deductions for charitable contributions of easements and other partial interests in real estate contributed for conservation purposes. The provision would expand the types of partial interests which qualify to include the entire interest of the donor in real property other than the rights to subsurface minerals. It also would limit contributions eligible for the deduction to those contributed to a governmental unit, publicly supported charitable organization, or an entity controlled by one of these two kinds of organizations. Conservation purposes, as amended by this provision, would be defined as: (1) the preservation of land areas for outdoor recreation by, or the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or of a similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State or local governmental policy and will yield a significant public benefit; or (4) the preservation of a historically important land area or a certified historic structure. Finally, the bill would make these provisions permanent.

Section 104—Investment Tax Credit for Rehabilitated Buildings Leased to Tax-exempt Organizations or Governmental Units

The Revenue Act of 1978 made the investment tax credit generally available to expenditures incurred after October 31, 1978, for rehabilitating older business and commercial buildings (except those used for residential purposes). However, under the investment tax credit rules, generally no credit is allowed for property used by a tax-exempt organization or governmental unit.

The provision will allow the investment tax credit for rehabilitated buildings which are leased to a tax-exempt organization or governmental unit.

Section 105—Revision of Source Rules for Income from Certain Leased Aircraft, Vessels, and Spacecraft

This provision would revise the rules for determining the source of income from the lease of certain vessels, aircraft, and spacecraft. The income or loss would generally be treated as from U.S. sources if the craft qualifies (or would qualify except for governmental use) for the investment tax credit, is leased to a U.S. person, and is U.S. manufactured. This rule would treat income as from U.S. sources in later periods even if the craft is then leased to a foreign person.

Section 106—Tax Rates Applicable to Nonexempt Income of Homeowners Associations

Under present law, a qualified homeowners association is not taxed on its exempt function income. Other income, less certain deductions, is taxed at the highest corporate rate of 46 percent except for long-term capital gains, which are taxed at a rate of 28 percent. Under this provision of the bill, all income of a homeowners association (other than exempt function income) will be taxed at a rate of 30 percent.

Section 107—Tax Treatment of Certain Income of Mutual or Cooperative Telephone and Electric Companies

This section of the bill provides that, in determining whether a mutual or cooperative telephone or electric company meets the 85-percent member-income requirement for tax exemption (under Code sec. 501(c)(12)), any income from rental of poles (used in the cooperative's exempt activities) or from display listings in a directory is to be disregarded. The section also provides that income from the rental of such poles by mutual or cooperative telephone and electric companies is not subject to the tax on unrelated business taxable income.

Section 108—Refund of Taxes on Certain State Police Officer Subsistence Allowances

Under present law, cash meal allowances received by State police officers are includible in gross income. However, Public Law 95–427 provided that certain cash meal allowances received by State police officers during the period after 1969 and before 1977 are not includible in income to the extent the allowances *were not reported* by the officers.

The provision will allow a refund or credit of taxes paid by a State police officer with respect to cash meal allowances which *were reported* in gross income in returns filed by the officer for calendar years 1974, 1975, and 1976.

Section 109—Clarification of Limitation on Deductibility of Certain Entertainment Facility Expenses Includible in Income of Recipient

Under this provision, the general rule for the disallowance of deductions for entertainment, amusement, or recreation expenses (Code sec. 274(a)) does not apply to expenses which are includible in the gross income of the recipient of the entertainment, amusement, or recreation as compensation for services or as a prize or award under Code section 74. This provision will not apply if the taxpayer fails to include the amount in any information return (Form 1099) which is required to be filed with the Internal Revenue Service (or would be required except that the amount is less than $600).

Section 201—Prevention of Abuse of Certain Employee Benefit Requirements

Under present law, individuals employed by certain separate but related entities are aggregated and treated as employed by a single employer for purposes of the rules relating to qualified retirement plans. To eliminate certain abuses resulting under present law, this provision expands the aggregation rules with respect to the treatment of certain service organizations and related organizations for purposes of satisfying requirements for qualified retirement plans, medical reimbursement plans, cafeteria plans, and simplified employee pensions.

Sections 221-226—Provisions Relating to Employee Stock Ownership and Cafeteria Plans

1. Cash distribution option and put option for stock bonus plans (sec. 221 of the bill)

This provision will permit a tax-qualified stock bonus plan to distribute cash to a participant entitled to a distribution, subject to the participant's right to demand that benefits be distributed in the form of employer stock. If a stock bonus plan provides for cash distributions and if stock which is distributed is not readily tradable on an established market, the participant must have the right to require the employer to repurchase the stock.

2. Special limitation for tax credit employee stock ownership plans and employee stock ownership plans (sec. 222 of the bill)

Under this provision, the increase in the dollar limitation on annual additions with respect to a participant in a tax credit employee stock ownership plan or an employee stock ownership plan (provided certain requirements are met with respect to allocations under the plan) will be the lesser of (1) the usual dollar limitation on annual additions to a participant's account, or (2) the amount of employer securities (or cash used to acquire such securities) contributed to the plan.

3. Valuation of employer securities in tax credit employee stock ownership plans (sec. 223 of the bill)

Under this provision, the value of employer securities listed on a national exchange contributed to a tax credit employee stock ownership plan will be the average of the closing prices of such securities for the 20 consecutive trading days immediately preceding the date of contribution to the plan.

4. *Participation of subsidiary corporation in a tax credit employee stock ownership plan (sec. 224 of the bill)*

Under this provision, if a parent corporation owns 100 percent of a first-tier subsidiary and the first-tier subsidiary owns 50 percent of a second-tier subsidiary, the second-tier subsidiary is allowed to contribute employer securities of the parent corporation to its tax credit employee stock ownership plan. In addition, parent stock could be contributed by 80-percent owned lower-tier subsidiaries in this chain.

5. *Retirement savings by tax credit employee stock ownership plan participants (sec. 225 of the bill)*

Under this provision, if employees are permitted to elect out of a tax credit employee stock ownership plan for the purpose of establishing IRAs, the tax credit employee stock ownership plan does not fail to meet the minimum coverage requirements of the Code if the plan benefits at least 50 percent of all employees (excluding employees who have not satisfied the minimum age and service requirements or who are otherwise permitted to be excluded), and if the total allocations under the tax credit employee stock ownership plan are equal to no more than two percent of the compensation of participating employees.

6. *Cafeteria plans permitted to provide deferred compensation under rules applicable to cash or deferred profit-sharing and stock bonus plans (sec. 226 of the bill)*

Under this provision, benefits under a cafeteria plan could include amounts which an employee covered by a profit-sharing or stock bonus plan with a qualified cash or deferred arrangement can elect to have the employer pay as a contribution to a trust under a profit-sharing or stock bonus plan. Amounts contributed by the employer, pursuant to the employee's election, will be treated as nontaxable benefits for purposes of the "cafeteria" plan rules.

Section 301—Election of Estate Tax Alternate Valuation

Under present law, an executor may elect to value assets for estate tax purposes as of the date of the decedent's death or the alternate valuation date which is generally six months after the decedent's death. Alternate valuation must be elected on an estate tax return that is timely filed.

This provision will permit an executor to elect alternate valuation on a timely filed estate tax return or, if no estate tax return is timely filed, on the first estate tax return filed.

Section 302—Extension of Time To Amend Governing Instruments of Charitable Split-Interest Trusts

The Tax Reform Act of 1969 imposed new requirements which must be satisfied by charitable lead and remainder trusts in order for an income, gift, or estate tax deduction to be allowed for the transfer of an income interest or a remainder interest to charity. However, certain exceptions were provided in the case of wills executed, or property transferred in trust, on or before October 9, 1969, in order to allow a reasonable period of time to take the new rules into account.

The provision extends for two years, until December 31, 1980, the time to amend, or commence judicial proceedings to amend, instruments of both charitable lead trusts or charitable remainder trusts which were executed before December 31, 1977, in order to conform such instruments to the 1969 Act requirements for a charitable deduction to be allowed for income, gift, or estate tax purposes.

II. EXPLANATION OF THE BILL

A. Treatment of Certain Community Income for Spouses Living Apart (sec. 101 of the bill and new sec. 66 of the Code)

Present law

Under present income tax laws, income considered community property under State law generally is taxed in equal shares to a husband and wife. Consequently, if a husband and wife file separate returns, each is usually required to report one-half of the income considered community property.

Reasons for change

Under present law, an abandoned spouse may be liable for Federal income tax on one-half of the community income earned by the other spouse even though the abandoned spouse has not actually received or benefited from any of the income. The committee believes that in these circumstances a spouse should not be taxed on community income earned or received by the other spouse.

Explanation of provision

If certain requirements are met, State community property laws would be disregarded with respect to certain types of income for Federal income tax purposes. To qualify, a couple must be married at some time during the calendar year, but live apart during the entire calendar year and not file a joint return with respect to a taxable year beginning or ending in the calendar year. In addition, one or both of the spouses must have earned income for the calendar year that is community income, and no portion of that earned income must have been transferred directly or indirectly between the spouses during the calendar year. For purposes of the latter income transfer test, the committee intends that transfers of *de minimis* amounts or value are not to be taken into account. It is anticipated that definitive guidance concerning these amounts will be prescribed in Treasury regulations, revenue rulings, or revenue procedures, and periodically revised as circumstances may warrant. Further, a transfer or payment to, or for the benefit of, the couple's dependent child is not to be treated as an indirect transfer to an abandoned spouse solely because the payment or transfer satisfies an obligation of support imposed on the abandoned spouse.

If the requirements are met, any community income of the spouses for the calendar year is allocated in accordance with Code section 879(a). Under that provision, earned income (other than trade or business income and a partner's distributive share of partnership income) is, for tax purposes, the income of the spouse who rendered the personal services. In the case of income derived from a trade or business (other than that carried on by a partnership), the income is treated as the husband's income unless the wife exercises substantially all of the management and control of the trade or business. In the case of trade or business income of a partnership, the income is taxed to the spouse who has a distributive share of the partnership profits.

Effective date

The provision applies to calendar years beginning after December 31, 1979.

Revenue effect

It is estimated that this provision will have a negligible effect on budget receipts.

B. Amortization of Business Startup Costs (sec. 102 of the bill and new sec. 194 of the Code)

Present law

In general

Under present law, ordinary and necessary expenses paid or incurred in carrying on a trade or business, or engaging in a profit-seeking activity, are deductible. Expenses incurred prior to the establishment of a business normally are not deductible currently since they are not incurred in carrying on a trade or business or while engaging in a profit-seeking activity.

Expenditures made in acquiring or creating an asset which has a useful life that extends beyond the taxable year normally must be capitalized. These costs ordinarily may be recovered through depreciation or amortization deductions over the useful life of the asset. However, costs which relate to an asset with either an unlimited or indeterminate useful life may be recovered only upon a disposition or cessation of the business.

Certain business organizational expenses for the formation of a corporation or partnership may be treated as deferred expenses, on an elective basis, and amortized over a period of not less than 60 months (Code secs. 248 and 709). Expenditures eligible for amortization only include expenditures which are directly incident to the creation of the corporation or business. Preopening or startup expenses, such as employee training expenses, are ineligible for amortization under the business organizational expense provisions.

Investigatory expenses

Investigatory expenses are costs of seeking and reviewing prospective businesses prior to reaching a decision to acquire or enter any business. Business investigatory expenses may be of either a general or specific nature. The former are related either to businesses generally, or to a category of business; the latter are related to a particular business.

Business investigatory expenses generally are nondeductible regardless of whether they are incurred by an existing business in relation to another business or by a taxpayer who is not in any business. However, taxpayers may be able to deduct a loss for business investigatory expenses incurred in an unsuccessful attempt to acquire a specific business.[1] Nevertheless, business investigatory expenses of a general nature normally are viewed as being either nondeductible personal expenses, or as not being ordinary and necessary trade or business expenses, viz., because no business exists, within the meaning of section 162 of the Code.

---

[1] See *Harris W. Seed*, 52 T.C. 880 (1969), *acq.*, 1970-2 C.B. xxi; Rev. Rul. 77-254, 1977-2 C.B. 63.

Startup costs

Startup or preopening expenses are costs which are incurred subsequent to a decision to acquire or establish a particular business and prior to its actual operation. Generally, the term "startup costs" refers to expenses which would be deductible currently if they were incurred after the commencement of the particular business operation to which they relate. Such costs may be incurred by a party who is not engaged in any existing business, or by a party with an existing business who begins a new one that is unrelated, or only tangentially related, to his or her existing business.

Startup costs may include expenses relating to advertising, employee training, lining-up distributors, suppliers, or potential customers, and professional services in setting up books and records. However, startup expenses also may refer to certain items related to the establishment and operation of a business which are nondeductible and nonamortizable even if they are incurred subsequent to commencement of business operations. These nondeductible and nonamortizable expenses either may be of a purely capital nature, or may be capitalizable simply because they relate to a business with an indeterminate life.

Reasons for change

The committee believes that the provision for the amortization of business startup and investigatory expenses will encourage formation of new businesses and decrease controversy and litigation arising under present law with respect to the proper income tax classification of startup expenditures.

Explanation of provision

In general

Under the provision, business startup expenditures may be amortized, at the election of the taxpayer, over a period of not less than 60 months.

Eligible expenditures

In general, expenditures eligible for amortization must satisfy two requirements. First, the expenditure must be paid or incurred in connection with creating, or investigating the creation or acquisition of, a trade or business entered into by the taxpayer. Second, the expenditure involved must be one which would be allowable as a deduction for the taxable year in which it is paid or incurred if it were paid or incurred in connection with the expansion of an existing trade or business in the same field as that entered into by the taxpayer.

Under the provision, eligible expenses consist of investigatory costs incurred in reviewing a prospective business prior to reaching a final decision to acquire or to enter that business. These costs include expenses incurred for the analysis or survey of potential markets, products, labor supply, transportation facilities, etc. Eligible expenses also include startup costs which are incurred subsequent to a decision to establish a particular business and prior to the time when the business begins. For example, startup costs include advertising, salaries and wages paid to employees who are being trained and their instructors, travel and other expenses incurred in lining up prospective distributors, suppliers or customers, and salaries or fees paid or incurred for executives, consultants, and for similar professional services.

In the case of an existing business, eligible startup expenditures do not include deductible ordinary and necessary business expenses paid or incurred in connection with an expansion of the business. As under present law, these expenses will continue to be currently deductible. The determination of whether there is an expansion of an existing trade or business or a creation or acquisition of a new trade or business is to be based on the facts and circumstances of each case as under present law.

Startup expenditures eligible for amortization do not include any amount with respect to which a deduction would not be allowable to an existing trade or business for the taxable year in which the expenditure was paid or incurred. Thus, amounts paid or incurred in connection with the sale of stock, securities, or partnership interests are not within the definition of startup expenditures, e.g., securities registration expenses, underwriters' commissions, etc., are not startup expenditures. In addition, the amortization election for startup expenditures does not apply to amounts paid or incurred as part of the acquisition cost of a trade or business. Also, startup expenditures do not include amounts paid or incurred for the acquisition of property to be held for sale or property which may be depreciated or amortized based on its useful life, including expenses incident to a lease and leasehold improvements. Whether an amount is consideration paid to acquire a business (or an interest therein) depends upon the facts and circumstances of the situation. Corporate or partnership organizational expenditures which may be amortized under provisions of present law (Code sec. 248 or 709) are covered by those amortization provisions rather than this provision.

Trade or business requirement

Expenditures must relate to the investigation or creation of an active trade or business (within the meaning of Code sec. 162). Thus, expenditures attributable to an investment are not eligible for amortization under this provision. For this purpose, an activity with respect to which expenses are deductible only as itemized deductions for individuals (Code sec. 212) is not considered to be a trade or business. In addition, an activity is not considered to be a trade or business activity solely because the property used in the activity may be eligible for special capital gain or ordinary loss treatment under Code section 1231. Further, in the case of rental activities, there must be significant furnishing of services incident to the rentals to constitute an active business (within the meaning of Code sec. 162) rather than an investment. Thus, a rental activity is not considered to be an active trade or business solely because deductions attributable to it are allowable in computing adjusted gross income (Code sec. 62(5)).

Investigatory expenses for acquisition of existing businesses

In addition to the active business requirement applicable to the entity, in the case of investigatory expenditures incurred by a taxpayer with respect to the acquisition of an existing trade or business, the taxpayer will be considered to have entered into a trade or business only if the taxpayer has an equity interest in, and actively participates in the management of, the trade or business. For this purpose, a taxpayer will not be considered to have a qualifying interest with respect to an investment represented by a bond or other debt instrument (even if convertible), preferred stock, or a limited partnership interest.

A sole proprietor would always be considered to have an operator equity interest in the trade or business. In the case of a taxpayer incurring investigatory expenses with respect to the acquisition of common stock, a taxpayer would usually be considered to have acquired an investment interest rather than a qualifying trade or business interest. Thus, investigatory expenses attributable to the acquisition of corporate stock generally will not be eligible for amortization. (As under present law, certain investment counseling and similar expenses paid or incurred with respect to investments held by an individual investor would be currently deductible as an itemized deduction for the production of income, etc., under Code section 212.) However, if in substance, a transaction is the acquisition of the assets of a trade or business, the investigatory expenses are eligible for amortization even though one of the steps of the transaction involved the acquisition of stock, e.g., the acquisition of a corporation which is then liquidated. Further, for example, a corporate taxpayer will be considered to have acquired the trade or business assets of an acquired corporation, rather than having made a portfolio investment in stock, if the acquired corporation becomes a member of an affiliated group which includes the taxpayer incurring the investigatory expenses and a consolidated income tax return is filed for that group.

In the case of the acquisition of a general partnership interest, the taxpayer could be considered to have acquired an active interest if the taxpayer actively participates in the management of the trade or business.

Taxpayer eligible for amortization

In general, the amortization deduction is allowable to the taxpayer who incurs the startup expenditures and enters the trade or business. In the case of startup expenditures incurred by a corporate taxpayer (including a subchapter S corporation) the amortization deduction is to be taken on the income tax return for that corporation and is not deductible as a special item to any shareholder. In the case of a sole proprietor, the amortization deduction is allowable as a deduction for the trade or business with respect to which the startup expenditure were paid or incurred. In the case of startup expenditures incurred by a partnership, the amortization deduction is to be taken into account in computing the taxable income of the partnership (except to the extent it may be required to be taken into account separately under regulations prescribed under Code sec. 702(a)(7). In the case of qualifying investigatory expenses incurred in connection with the acquisition of a partnership interest, the amortization deduction is to be taken by the partner who incurred such expenses.

Amortization period

Under the provision, the trade or business actually must be entered into (or "begin") before an amortization period can start. Therefore, no deduction is allowed under the provision with respect to items incurred incident to a trade or business which actually is not commenced or acquired by the taxpayer.

The amortization period of not less than 60 months commences with the month in which a business begins. For purposes of this determination, an acquired trade or business is treated as beginning with the month in which a taxpayer acquires it. The month of acquisition is to be determined with regard to the economic substance of each situation. Generally, it is anticipated that the definition of when a business begins is to be made in reference to the existing provisions for the amortization of organizational expenditures (Code secs. 248 and 709). Since the minimum amortization period allowed by the provision is 60 months, the election is inapplicable to businesses which have an ascertainable useful life of less than 60 months. Expenditures related to such businesses remain subject to the provisions of existing law.

The generally applicable income tax rules apply in the case of any amount subject to an election which is unamortized upon a termination of the trade or business. Therefore, in an appropriate instance, a taxpayer may deduct any unamortized amount as a loss (Code sec. 165) or an unamortized amount might be carried over to the taxpayer's successor in interest (e.g., see Rev. Rul. 70–241, 1970–1 C.B. 84, relating to the treatment of unamortized organizational expenses in connection with a reorganization qualifying under Code section 368(a)(1)(F)).

Scope and manner of election

Amortization elections generally must be made at the time, and in the manner, specified in Treasury regulations.[2] Elections, however, may not be made later than the time for filing the return (including extensions) for the taxable year in which the business begins. It is anticipated that election procedures will be similar to those used under sections 248 and 709 of the Code (relating to certain organization fees), and that elections may not be made on a conditional basis.

Once an amortization period is selected, it may not be changed. Thereafter, the selected period must be used in computing taxable income for the taxable year in which the election is made and for all subsequent taxable years.

The election applies to all eligible expenditures paid or incurred by the taxpayer in connection with a newly-created or acquired business.

Effective date

The provision applies to amounts paid or incurred after July 29, 1980.

Revenue effect

It is estimated that the provision would result in a reduction in budget receipts of $22 million in fiscal year 1981, $73 million in fiscal year 1982, $121 million in fiscal year 1983, $180 million in fiscal year 1984, and $254 million in fiscal year 1985.

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[2] In the case of startup expenditures paid or incurred by a partnership in connection with the creation of a new, or acquisition of an existing, trade or business, an amortization election would have to be made by the partnership rather than the individual partners (sec. 703(b)).

C. Charitable Deduction for Certain Contributions of Real Property for Conservation Purposes (sec. 103 of the bill and sec. 170 of the Code)

Present law

As a general rule, a deduction is not allowed for income, estate, or gift tax purposes for contributions to charity of less than the taxpayer's entire interest in the contributed property. This restriction was enacted by Congress in the Tax Reform Act of 1969 to prevent certain tax-avoidance transactions in which the taxpayer could obtain a deduction for a gift to a charity of the use of part of his property. Exceptions allowing deductions for charitable contributions of partial interests in property were provided in the 1969 Act for the contribution of (1) a remainder interest in a personal residence or farm; (2) an undivided portion of the taxpayer's entire interest in the property; (3) certain interests in trust; and (4) interests not transferred in trust that would be deductible if made in trust (Code secs. 170(f), 2055(e)(2), and 2522(c)(2)).

The Conference Report on the Tax Reform Act of 1969 states that a gift of an open space easement in gross is to be considered a gift of an undivided interest in property if the easement is in perpetuity. On the basis of that Conference Report language, the Internal Revenue Service issued Regulations providing that a deduction would be allowed for the value of a restrictive easement gratuitously conveyed to a charitable organization in perpetuity whereby the donor agrees to restrictions on the use of his property such as, restrictions on the type and height of buildings that may be erected, the removal of trees, the erection of utility lines, the dumping of trash, and the use of signs (Treas. Reg. § 1.170A-7(b)(1)(ii)). In addition, the IRS has issued public rulings allowing deductions, under the undivided interest exception, for contributions of certain kinds of perpetual easements, including open space, historical, and recreational easements.[1] The undivided interest exception did not, however, extend to situations where taxpayers transferred their fee interest in property to a charitable organization while retaining valuable mineral rights.[2]

Explicit statutory exceptions for charitable contributions made "exclusively for conservation purposes" were provided in the Tax Reform Act of 1976 (and modified by the Tax Reduction and Simplification Act of 1977). Under these exceptions, a deduction is permitted for the contribution to a charitable organization, exclusively for conservation purposes, of (a) a lease on, option to purchase, or easement with respect to real property granted in perpetuity or (b) a remainder interest in eal property.[3] (Code secs. 170(f)(3)(B) (iii) and (iv).) The exceptions for these partial interests contributed for conservation purposes nly apply to contributions made before June 14, 1981.

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[1] Rev. Rul. 74-583, 1974-2 C.B. 80; Rev. Rul. 75-358, 1975-2 C.B. 76; Rev. Rul. 75-373, 1975-2 C.B. 77.

[2] Compare Rev. Rul. 76-331, 1976-2 C.B. 52 with Rev. Rul. 77-148, 1977-1 C.B. 63 and Rev. Rul. 75-373, 1975-2 C.B. 77.

Regulations have not yet been promulgated under the explicit deductions for conservation easements added to the Code by the 1976 and 977 Acts, and the Regulations promulgated under the Tax Reform Act of 1969 and in accordance with the Conference Report language are still outstanding (Treas. Reg. § 1.170A-7(b)(1)(ii)). It is unclear whether Congress intended the statutory provisions enacted in 1976 and modified in 1977 to supersede the statements made in the 1969 Conference Report.

Reasons for change

The committee recognizes the increasingly important role that conservation easements have come to play in efforts to conserve and protect the country's natural resources and its cultural heritage. Therefore, the committee believes that the provisions of present law allowing deductions for conservation easements should be extended on a permanent basis. It has concluded, however, that several modifications to the provisions of present law are appropriate.

In particular, the committee found it appropriate to expand the types of transfers which will qualify as deductible contributions in certain cases where the contributions are likely to further significant conservation goals without presenting significant potential for abuse. In addition, the committee bill would restrict the qualifying contributions where there is no assurance that the public benefit, if any, furthered by the contribution would be substantial enough to justify the allowance of a deduction. In addition, the committee decided that the treatment of open space easements should be clarified.

Explanation of provision

Qualified real property interests

Under the bill, the types of partial interests which may qualify as a deductible conservation contribution are expanded to include the contribution of a taxpayer's entire interest in real property other than his interest in subsurface oil, gas or other minerals and the right of access to such minerals. The committee intends that a contribution will not qualify under this new provision if the donor has reduced his "entire interest in real property" before the contribution is made by, for example, transferring part of his interest in the real property to a related person in order to retain control of more than a qualified mineral interest in the real property or reduce the real property interest donated.[4]

The types of partial interests which may qualify for a charitable deduction are also modified by replacing the present category covering a lease on, option to purchase, or easement on real property granted in perpetuity with a general category covering "a restriction (granted in perpetuity) on the use which may be made of the real property."

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[3] Prior to their modification by the 1977 Act, the provisions added by the 1976 Act also allowed deductions for term easements having a duration of at least 30 years.

[4] See e.g. Treas. Reg. § 1.170A-7(a)(2)(i).

This new language would cover easements and other interests in real property that under State property laws have similar attributes (e.g., a restrictive covenant). The bill does not modify the other category of partial interests, remainder interests in real property, which may qualify for a deductible conservation contribution.

Conservation purpose

The bill revises in several respects the present definition of conservation purposes. The bill defines the term "conservation purpose" to include four objectives. Although many contributions may satisfy more than one of these objectives (it is possible, for example, that the protection of a wild and scenic river could further more than one of the objectives), it is only necessary for a contribution to further one of the four.

First, conservation purpose includes the preservation of land areas for outdoor recreation by the general public or for the education of the general public. Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.

Second, conservation purpose includes the protection of a relatively natural fish, wildlife or plant habitat, or similar ecosystem. Under this provision, a contribution would be considered to be made for conservation purposes if it will operate to protect or enhance the viability of an area or environment in which a fish, wildlife, or plant community normally lives or occurs. It would include the preservation of a habitat or environment which to some extent had been altered by human activity if the fish, wildlife, or plants exist there in a relatively natural state; for example, the preservation of a lake formed by a man-made dam or a salt pond formed by a man-made dike if the lake or pond is a natural feeding area for a wildlife community that includes rare, endangered or threatened native species. The committee intends that contributions for this purpose will protect and preserve significant natural habitats and ecosystems in the United States. Examples include habitats for rare, endangered, or threatened native species of animals, fish or plants; natural areas that represent high quality examples of a native ecosystem, terrestrial community, or aquatic community; and natural areas which are included in, or which contribute to the ecological viability of, a local, state, or national park, nature preserve, wildlife refuge, wilderness area or other similar conservation area. These natural habitats and ecosystems might be protected by easements or other restrictions regarding, for example, the development or use of property that would affect the habitat or ecosystem to be protected.

Third, conservation purpose includes the preservation of open space (including farmland and forest land) where such preservation (1) is for the scenic enjoyment of the general public and will yield a significant public benefit or (2) is pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit. The requirements of this conservation purpose are intended to insure that deductions are permitted only for open space easements that provide significant benefits to the public. The bill permits a deduction for an open space easement only if it meets the requirements imposed by this provision. Thus, a deduction for an open space easement in gross is not allowable under the undivided portion exception in Code section 170(f)(3)(B)(ii).

To satisfy the requirement of scenic enjoyment by the general public, visual, not physical, access by the general public to the property is sufficient. Thus, preservation of land may be for the scenic enjoyment of the general public if development of the property would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, historic structure or land area, and such area or transportation way is open to, or utilized by, the public.

Open space easements may also qualify even if the property has no significant scenic value as long as the preservation or conservation of the property is pursuant to a clearly delineated Federal, State, or local governmental preservation or conservation policy. This provision is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. For example, this requirement would be satisfied by a Federal executive order pursuant to a Federal statute establishing a conservation program or a state statute or local ordinance establishing a funded conservation program for a scenic river or other identified conservation project. A broad declaration by a single official, for example, a county executive, or a legislative body, for example, a state legislature, that land should be conserved is not sufficient, but the governmental conservation policy need not be a certification program that identifies particular lots or small parcels of individually owned property.

The considerations to be taken into account in the determination of whether a particular contribution would yield a significant public benefit might include (among other factors) the following:

(1) the uniqueness of the property;

(2) the intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);

(3) the consistency of the proposed open space use with public programs (whether Federal, State, or local) for conservation in the region, including programs for water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in or related to a government approved master plan or land management area; and

(4) the opportunity for the general public to enjoy the use of the property or to appreciate its scenic values.

Finally, conservation purpose also includes the preservation of an historically important land area or a certified historic structure. The term "historically important land area" is intended to include independently significant land areas (for example, a civil war battlefield) and historic sites and related land areas, the physical or environmental features of which contribute to the historic or cultural importance and continuing integrity of certified historic structures, for example, Mount Vernon, or historic districts, such as, Waterford, Virginia, or Harper's Ferry, West Virginia. For example, the integrity of a certified historic structure may be protected under this provision by perpetual restrictions on the development of such a related land area. The term "certified historic structure" for purposes of this charitable contribution deduction generally has the same meaning as in present Code section 191(d)(1) (dealing with 5-year amortization of expenditures incurred in the rehabilitation of certified historic structures). However, a "structure" for this purpose means any structure whether or not it is depreciable. Thus, for example, easements on private residences may qualify under this provision. In addition, a structure would be considered to be a certified historic structure if it satisfied the certification requirements either at the time the transfer was made or at the due date (including extensions) for filing the donor's return for the year in which the contribution was made.

In view of the need of potential donors to be secure in their knowledge that a contemplated contribution will qualify for a deduction, the committee expects that taxpayers may obtain a prior administrative determination as to whether the contemplated contribution will be considered to have been made for a qualifying conservation purpose. In addition, the committee expects that regulations under this section will be classified among those regulation projects having the highest priority, and that, to the extent possible, issues that may arise in the interpretation of the statute will be resolved before publication of regulations by the issuance of administrative determinations.

Exclusively for conservation purposes

The bill retains the present law requirement that contributions be made "exclusively for conservation purposes." Moreover, the bill explicitly provides that this requirement is not satisfied unless the conservation purpose is protected in perpetuity. The contribution must involve legally enforceable restrictions on the interest in the property retained by the donor that would prevent uses of the retained interest inconsistent with the conservation purposes. In the case of a contribution of a remainder interest, the contribution will not qualify if the tenants, whether they are tenants for life or a term or years, can use the property in a manner that diminishes the conservation values which are intended to be protected by the contribution. In addition, this requirement is not met if the contribution would accomplish one of the enumerated conservation purposes, but would allow uses of the property that would be destructive of other significant conservation interests. For example, the preservation of farmland would not qualify under the open space purpose if a natural ecosystem has been or, under the terms of the contribution, can be significantly injured or destroyed by the use of pesticides in the operation of the farm.

In the case of a qualified mineral interest gift, the requirement that the conservation purpose be protected in perpetuity is not satisfied if any method of mining, removal, or extraction that is inconsistent with the particular conservation purposes of a contribution is permitted at any time. Some methods of mining, removal, or extraction may have temporary, localized impact on the real property contributed that is not destructive of significant conservation interests, and this requirement may be satisfied even though such methods are permitted. In addition, the bill specifically states that this requirement is not met if at any time the minerals may be removed or extracted by any surface mining method.

By requiring that the conservation purpose be protected in perpetuity, the committee intends that the perpetual restrictions must be enforceable by the donee organization (and successors in interest) against all other parties in interest (including successors in interest). Generally, the committee contemplates that the restrictions would be recorded. The committee does not, by the requirement that the conservation purpose be protected in perpetuity, intend that a recipient of a conservation contribution must set aside funds for the enforcement of the contribution.

The committee does intend, however, to limit the deduction only to those cases where the conservation purposes will in practice be carried out. The committee contemplates that the contributions will be made to organizations which have the commitment and the resources to enforce the perpetual restrictions and to protect the conservation purposes. The requirement that the conservation purpose be protected in perpetuity is also intended to limit deductible contributions to those transfers which require that the donee (or successor in interest) hold the conservation easement (or other restriction) or other property interests exclusively for conservation purposes (i.e., that they not be transferable by the donee except to other qualified organizations that will also hold the perpetual restriction or property exclusively for conservation purposes).

Qualified organizations

In general, the bill restricts eligible recipients of contributions of partial interests for conservation purposes to governments and publicly supported charities. Thus, a governmental unit (described in Code sec. 170(b)(1)(A)(v)) would be an eligible recipient, as would be a charitable organization (described in Code sec. 501(c)(3)) that is publicly-supported within the meaning of either Code section 170(b)(1)(A)(vi) or Code section 509(a)(2). In addition, an organization that is not itself publicly supported but nevertheless is qualified as a "public charity" (under Code sec. 509(a)(3)) would be eligible if it is controlled by a government or publicly supported organization. Thus, for example, an organization created as a title-holding subsidiary of a publicly-supported charitable organization would be an eligible recipient if it is controlled by the parent organization.

Valuation

In general, a deduction is allowed for a charitable contribution in the amount of the fair market value of the contributed property, defined as the price at which the property would change hands between a willing buyer and a willing seller. Thus, the amount of the deduction for the contribution of a conservation easement or other restriction is the fair market value of the interest conveyed to the recipient. However, because markets generally are not well established for easements or similar restrictions, the willing buyer/willing seller test may be difficult to apply (although it may become increasingly possible to determine the value of conservation easements by reference to amounts paid for such interests in easement acquisition programs as such programs increase). As a consequence, conservation easements are typically (but not necessarily) valued indirectly as the difference between the fair market value of the property involved before and after the grant of the easement. (See Rev. Rul. 73-339, 1973-2 C.B. 68 and Rev. Rul. 76-376, 1976-2 C.B. 53.) Where this test is used, however, the committee believes it should not be mechanically applied.

For example, where before and after valuation is used, the fair market value of the property before contribution of the easement should take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would be developed. Where applicable, valuation of the property before contribution should take into account zoning, conservation, or historic preservation laws that would restrict development of the property. Valuation of the transfer should take into account the impact of the transfer on other property, as in the case where restrictions on one parcel of property serve to increase the value of adjacent property. Also, there may be instances in which the grant of an easement may serve to enhance, rather than reduce, the value of property, and in such instances no deduction would be allowable; for example, where there is a premium in value on property of a historic nature. Similarly, in a case where the owners of a high-rise oceanfront condominium make a contribution of an open space easement that prohibits further development of the property between the high-rise structure and the shoreline but does not allow the public access to the beach and does not diminish the value of the property overall, there would be no deductible amount. (In this example, it is questionable, absent other considerations, whether the gift of such a beach easement with limited public scenic value and without public access to the beach would qualify under the requirements of the open space provision.) The committee also intends that, as the use of conservation easements increases, valuation would increasingly take into account the selling price value, in arm's-length transactions, of other properties burdened with comparable restrictions.

Study by Treasury

The committee found that it was hindered to some extent in its analysis of the present provisions relating to conservation contributions and its consideration of the proposed legislation by the absence of a comprehensive data base concerning the nature and scope of conservation easements and remainder interests. To permit Congress to evaluate more precisely the effectiveness of the conservation contribution provisions and the need, if any, to modify them at some future date, the committee requests that the Administration undertake a study on conservation easements and remainders to be submitted to Congress by 1985. The committee contemplates that, if possible, the Internal Revenue Service will devise a method by which to collect information on the number and characteristics of interests for which deductions are claimed under this section, possibly through the use of forms required to be submitted with the tax return on which a deduction is claimed.

Effective date

The provisions of the bill apply to transfers made after the date of enactment in taxable years ending after such date.

Revenue effect

It is estimated that this provision will reduce budget receipts by $5 million annually.

D. Investment Tax Credit for Rehabilitated Buildings Leased to Tax-exempt Organizations or Governmental Units (sec. 104 of the bill and sec. 48 of the Code)

Present law

The Revenue Act of 1978 extended the investment tax credit to rehabilitation expenditures incurred in connection with existing buildings used in all types of business or productive activities except those, such as apartments, which are used for residential purposes. Eligible buildings include factories, warehouses, office buildings, hotels, and retail and wholesale stores.

To qualify as a rehabilitation expenditure, the expenditure must be incurred after October 31, 1978, in connection with the rehabilitation or reconstruction of a building which has been in use for a period of at least 20 years before the commencement of the rehabilitation.

Under present law (Code secs. 48(a) (4) and (5)), property owned by or leased to a tax-exempt organization (other than use in an unrelated trade or business) or by a governmental unit is not qualified for the investment tax credit.[1]

The Technical Corrections Act of 1979 (P.L. 96-222) provided an exception to the rules designed to deal with certain equipment leasing tax shelters (under these rules property subject to a net lease is ineligible for the credit if the lessor is a noncorporate lessor). This exception was provided to accommodate the traditional and customary use of net lease arrangements for buildings.

Reasons for change

The committee believes that the present law exceptions to allowance of the investment credit for property leased to tax-exempt organizations and governments operate to significantly impair Congressional intent to encourage the rehabilitation of older structures. The committee believes that, in the case of rehabilitated structures, the credit should be available without regard to the status of a tenant to make significant progress in eliminating blight in older commercial areas. Further the committee believes that not applying the exceptions to rehabilitated structures will simplify compliance and administration of the law by eliminating difficult allocations of rehabilitation expenses between space leased to eligible tenants and to tax-exempt and governmental tenants.

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[1] For a curious interpretation of these provisions, see *Xerox Corporation* v. *U.S.*, Trial Division, U.S. Court of Claims (Nos. 420-72 and 212-74) (July 2, 1980). In this case, the judge held that the taxpayer-lessor was entitled to the investment tax credit on copying and duplicating machines leased to the Federal Government. This judge concluded that, because the machines were an integral part of a service furnished to the Government, the machines really were not "used" by the Government.

Explanation of provision

The provision makes the present rule denying the investment credit for property used by a tax-exempt organization or governmental unit inapplicable in the case of qualified rehabilitation expenditures to rehabilitate existing buildings which are leased to these organizations.

Effective date

The provision is effective for uses after July 29, 1980, in taxable years ending after that date.

Revenue effect

It is estimated that this provision will reduce budget receipts by $28 million in fiscal year 1981, $32 million in 1982, $38 million in 1983, $44 million in 1984, and $49 million in 1985.

E. Revision of Source Rules for Income from Certain Leased Aircraft, Vessels, and Spacecraft (sec. 105 of the bill and sec. 861 of the Code)

Present law

The source of income or loss from the rental of personal property generally depends on whether the property is used inside or outside the United States. Under this rule, income from the lease of a vessel or aircraft would be treated as income from sources without the United States to the extent that the rental payments were attributable to use of the equipment outside the United States. Similarly, income from the lease of a spacecraft would be from sources outside the United States.

Typically, under a lease financing of equipment (i.e., the equipment is purchased by a financial institution and leased to the user), the lease produces a tax loss during its early years to the lessor (primarily as a result of accelerated depreciation or amortization deductions). Where the equipment is used outside the United States, the loss arising on the lease is considered to be a foreign source loss under the generally applicable source rules described above. The characterization of the loss as foreign source operates to reduce the lessor's foreign source taxable income and thus its foreign tax credit limitation. Under certain circumstances, this may cause the lessor to lose a foreign tax credit, to which it would otherwise be entitled, for foreign taxes paid with respect to its other foreign operations. As a result, this type of lease-financing transaction could be less attractive than a lease-financing transaction involving equipment to be used exclusively in the United States.

In the case of ships and aircraft, which often are financed through long-term leases from financial institutions, lessors expressed concern about the loss of foreign tax credits. Under the Revenue Act of 1971, lessors of certain ships and aircraft were given an election to treat all income and loss from the rental of the ships or aircraft as from sources within the United States (Code. sec. 861(e)). Under this provision, if a taxpayer owns an aircraft or vessel which is eligible for the investment tax credit (or would be if not used by a government) and leases the aircraft or vessel to a United States person, other than a member of the same controlled group of corporations as the taxpayer, and if the aircraft or vessel is manufactured or constructed in the United States, then the taxpayer may elect, for any taxable year ending after the commencement of such lease, to treat all amounts includible in gross income with respect to the aircraft or vessel (whether during or after the period of any such lease), including gain from sale, exchange, or other disposition of such aircraft or vessel, as income from sources within the United States. As a corollary to this rule, losses from the lease would also be treated as from U.S. sources. The election may not be revoked without the consent of the Treasury. Moreover, if the ship or aircraft is transferred in certain transactions where gain is not fully recognized, the transferee is also bound by the election.

A similar problem also arose with respect to lease-financed U.S. railroad rolling stock used temporarily in Canada or Mexico. Under the Revenue Act of 1978, lessors generally are required, on a non-elective basis, to treat all income or loss from the rolling stock as from U.S. sources if it is expected that the leased rolling stock will be used predominantly within the United States.

Property which is used predominantly outside the United States, or which is used by a government or international organization, is generally not eligible for the investment tax credit. Exceptions are made to the requirement for use in the United States for U.S. documented ships or aircraft, rolling stock of domestic railroads, and certain other property. Under the Revenue Act of 1971, this requirement is also waived for any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962) or interest in such a satellite of a U.S. person. In addition, the 1971 Act waives the governmental use restriction for property used by the International Telecommunications Satellite Consortium (INTELSAT).

Reasons for change

The foreign tax credit rules are designed to prevent double taxation of the same income by the United States and foreign countries. The credit generally operates on the principle that the country in which income arises has the primary right to tax the income. Thus, where a U.S. taxpayer derives income from a foreign country, any taxes imposed by that country on the income are allowed as a credit against the U.S. tax on the income. In order to prevent the foreign tax credit from offsetting more than the U.S. tax on income which is potentially subject to double taxation, the credit is limited to the taxpayer's pre-credit tax on its foreign source income (computed on an overall basis). In view of the purpose to prevent double taxation (without allowing the credit to exceed the amount necessary to do so), the source rules used in computing the limitation are generally designed to identify as foreign source income that income which might reasonably be subject to foreign tax.

Where the lease property is a vessel, aircraft, or spacecraft used in international traffic, the present rules governing the source of income derived from the lease of personal property appear to produce results which by that standard are somewhat anomalous. The present source rules for rental income turn on the physical location of the property—the income is U.S. source if the property is physically located in the United States, foreign source if it is not. Where a U.S. taxpayer operates a ship, aircraft, or spacecraft in international traffic, the operating income occasionally is subject to tax by a country in which the operations are temporarily conducted; therefore, it is not unreasonable to treat operating income as foreign source where the craft is used outside the United States. However, where the craft is leased to the U.S. operator by another U.S. taxpayer, it evidently is very unlikely that any foreign government will attempt to tax the lease payments received by the U.S. lessor from the U.S. operator even if the craft is located outside the United States. (This is particularly true where the craft seldom, if ever, is located in a foreign country.)

Accordingly, consistent with the objectives of the source rules outlined above, the committee decided that lease payments on vessels, aircraft, and spacecraft received by U.S. lessors from U.S. persons will be treated as U.S. source where the property qualifies for the investment credit.

Explanation of provision

In situations in which lessors of ships or aircraft may currently elect to have all income or loss from the equipment treated as from U.S. sources, such treatment will become mandatory. The rule is also extended to apply to spacecraft on the same terms as ships and aircraft. Thus, income (or loss) from the rental of a spacecraft, aircraft, or vessel (a "craft") will be treated as U.S. source if (1) the craft qualifies for the investment tax credit (or would so qualify but for the fact that it is leased to a governmental unit), (2) the craft is leased to a U.S. person (other than a member of the same affiliated group of corporations as the taxpayer), and (3) the craft is manufactured or constructed in the United States. Once this rule applies to a craft, it will apply in all subsequent years in which the taxpayer owns the craft, even if it is leased to a foreign person. Thus, all income or loss, including gains from the sale, exchange, or other disposition of the craft, will be U.S. source. Also, if the craft is transferred in certain transactions in which gain is not fully recognized, the transferee will also be subject to the special source rule with respect to the craft.

Effective date

The provision is effective with respect to equipment first leased after the date of enactment. Other equipment will continue to be subject to the rules of prior law and, if subject to an election under section 861(e), will remain subject to that election.

Revenue effect

It is estimated that this provision will reduce budget receipts by a negligible amount annually through fiscal year 1985.

F. Tax Rates Applicable to Nonexempt Income of Homeowners Associations (sec. 106 of the bill and sec. 528(b) of the Code)

Present law

Homeowners associations

Under present law, a qualified homeowners association (a condominium management association or a residential real estate association) may elect to be treated as a tax-exempt organization (Code sec. 528). If an election is made, the association will not be taxed on "exempt function income." Exempt function income means membership dues, fees, and assessments received from persons who own residential units in the particular condominium or subdivision and who are members of the association.

The association will be taxed, however, on income which is not exempt function income. For example, any interest earned on amounts set aside in a sinking fund for future improvements is taxable. Similarly, any amount paid by persons who are not members of the association for use of the association's facilities, such as tennis courts, swimming pools, golf courses, etc., is taxable. Further, any amount paid by members for special use of the association's facilities, the use of which would not be available to all the members as a result of having paid the membership dues, fees, or assessments required to be paid by all members of the association, will be taxable. For example, if the membership dues, fees, or assessments do not entitle a member to use the association's party room or to use the swimming pool after a certain time period, then amounts paid for this use are taxable to the association.

Deductions from nonexempt income are allowed for expenses directly related to the production of such income, and a $100 deduction against taxable income is provided so that associations with only a minimal amount of taxable income will not be subject to tax. However, a net operating loss deduction is not allowed, and the special deductions for corporations (such as the dividends received deduction) are not allowed.

A homeowners association is taxed on its taxable income at the highest corporate rate (46 percent). If the association has net long-term capital gain, the tax rate is 28 percent for determining the association's alternative tax for capital gains.

Corporate tax rates

Under present law, a corporation is taxed at graduated rates on the first $100,000 of taxable income. The corporate rates are 17 percent on the first $25,000 of taxable income, 20 percent on the next $25,000, 30 percent on the next $25,000, 40 percent on the next $25,000, and 46 percent on all taxable income above $100,000. The alternative tax rate for capital gains is 28 percent.

The Code contains rules to prevent abuse of the graduated rate structure. A controlled group of corporations is limited in the aggregate to a maximum of $25,000 of taxable income in each of the rate brackets below the 46 percent bracket (Code sec. 1561). These rules are used to prevent income spiitting by such commonly controlled corporations.

Reasons for change

The basic rationale for the tax treatment of homeowners associations in the Code is that activities which would not be taxed if engaged in by homehowners individually (for example, maintenance of their property or the payment of utility bills) should not be subject to tax when the individuals band together in an association. An extension of this principle would appear to be that the rate of taxation on invested funds of the association should approximate the rate that would be imposed on the funds if they were invested by individual members of the association.

On the other hand, taxation of an association at the regular corporate rates would generally result in the taxation of this income at a rate of 17 percent. Members of homeowners associations are likely to be in higher tax brackets. In addition, there are apparently no rules which would prevent abuse of the graduated rate structure by commonly controlled or related homeowners associations. The tests for commonly controlled corporations would not appear to be effective for nonprofit corporations which do not normally have stock ownership. Also, there appear to be almost no barriers to prevent the multiplication of organizations in order to minimize the tax burden.

The committee believes that the taxable income of a homeowners association should not be subject to tax at higher rates than the rates which would normally apply to such income if it were taxable to the members of the association. However, it would be too complicated to require a pass through of ratable portions of an association's income to its members. Consequently, the committee believes that it is appropriate to tax the income of homeowners associations at a flat rate of 30 percent, which may reasonably approximate the average marginal income tax rate of the members of these associations.

Explanation of provisions

Under this provision, taxable income of a homeowners association will be taxed at a rate of 30 percent. This rate applies to both ordinary income and capital gains.

Effective date

This provision applies to taxable years beginning after December 31, 1980.

Revenue effect

It is estimated that this provision will reduce budget receipts by $1 million in fiscal year 1981, and $2 million annually in fiscal years 1982 through 1985.

G. Tax Treatment of Certain Income of Mutual or Cooperative Telephone and Electric Companies (sec. 107 of the bill and secs. 501(c)(12) and 513 of the Code)

Present law

Rural cooperatives

Under present law (Code sec. 501(c)(12)), a mutual or cooperative telephone company qualifies for exemption from Federal income taxation only if at least 85 percent of its income consists of "amounts collected from members for the sole purpose of meeting losses and expenses." In determining whether this member-income test has been satisfied, amounts of credits accrued or received by a mutual or cooperative telephone company from another company for communications services on calls involving members of the telephone cooperative are not taken into account.

Similarly, a rural electric cooperative may qualify for exemption from Federal income taxation under Code section 501(c)(12) if it satisfies the 85-percent member-income test.[1]

Tax on unrelated business income

.Under present law, most organizations which are generally tax exempt under the Internal Revenue Code are nonetheless subject to tax on unrelated business taxable income (Code sec. 511). Thus, unless a specific exception applies, an organization which is tax-exempt (under Code sec. 501(a))[2] is subject to tax with respect to income derived from any trade or business the conduct of which is not substantially related (aside from the need of the organization for income or funds) to the exercise or performance of its exempt function.

Reasons for change

Recently, the Internal Revenue Service has indicated that income from the rental of poles (*e.g.*, payments by a rural electric cooperative for use of a rural telephone cooperative's poles) and display listings in "Yellow Page" directories may be included in nonmember income of rural cooperatives.

The committee believes that income from pole rentals and display listings should not be treated as nonmember income for purposes of the

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[1] See Rev. Rul. 65-99, 1965-1 C.B. 242; Rev. Rul. 65-174, 1965-2, C.B. 169. In addition, certain rural electric cooperatives in the Tennessee Valley Authority ("TVA") area are exempt from taxation under Code section 501(c)(4) even though, generally because of TVA requirements, they do not meet the 85-percent member-income test. See *U.S.* v. *Pickwick Electric Membership Corp.*, 158 F. 2d 272 (6th Cir. 1946).

[2] In this paragraph, references to "tax-exempt organizations" do not include social clubs (Code sec. 501(c)(7)) and employees' beneficiary associations (Code sec. 501(c)(9)), which are taxable on investment income of all types as well as unrelated business income. The term "tax-exempt organizations," as used in this paragraph also does not include political organizations (described in Code sec. 527) and homeowners associations (described in Code sec. 528).

85-percent member-income test and that income from pole rentals should be exempt from the tax on unrelated business taxable income.

Explanation of provisions

The bill provides that, in applying the 85-percent member-income test to a mutual or cooperative telephone company, any income from qualified pole rentals or from display listings in a telephone directory is to be disregarded. Also, in applying the 85-percent non-member-income test to mutual or cooperative electric companies, any income from qualified pole rentals is to be disregarded. Income from qualified pole rentals generally means any income from the sale of the right to use any pole (or other structure) (1) which is used by the cooperative in providing telephone or electric services to its members, and (2) the use for which the pole is rented involved support of wires used for the transmission of electricity or of telephone or other communications.

The bill also provides that the engaging in activities which result in the receipt of qualified pole rentals is not an unrelated trade or business for a mutual or cooperative telephone or electric company. Thus, such rentals would not be subject to the tax on unrelated business taxable income.

Effective date

The provisions relating to the 85-percent member-income test apply to all taxable years to which the Internal Revenue Code of 1954 applies. The provisions relating to the treatment of qualified pole rentals for purposes of the unrelated business tax apply to taxable years beginning after December 31, 1969.

Revenue effect

It is estimated that this bill will reduce budget receipts by less than $5 million in fiscal year 1981 and by less than $2 million annually thereafter.

H. Refund of Taxes on Certain State Police Officer Subsistence Allowances (sec. 108 of the bill)

Present law

Code section 119, which was enacted in 1954, excludes from an employee's gross income the value of employer-furnished meals if they are provided for the employer's convenience, on its business premises, and for substantially noncompensatory reasons. The legislative history of section 119 indicates that the exclusion applies only to the value of meals furnished in kind.[1]

Although in 1954 Congress provided for an exclusion of up to $5.00 per day of statutory subsistence allowances paid to police officers, this provision was repealed in 1958 "to bring the tax treatment of subsistence allowances for police officials into line with the treatment of such allowances in the case of other taxpayers. . . ."[2]

On November 29, 1977, the Supreme Court decided *Commissioner* v. *Kowalski*, 434 U.S. 77, which held that cash meal allowances paid to a state trooper were includible in income since the section 119 exclusion applied only to meals furnished in kind. This decision resolved a conflict among the various appellate courts as to the taxability of cash meal allowances.

In response to the *Kowalski* decision, Congress enacted section 3 of Public Law 95–427. Under that section, the Supreme Court's decision generally applies only prospectively. The Act allowed an exclusion from gross income for certain subsistence allowances received by an officer during the years 1970 through 1976 to the extent that the allowances were not included in income on the officer's income tax return. It also applied to all State police officer subsistence allowances received in 1977 without regard to an officer's treatment of those allowances on his or her return.

Public Law 95–427 did not authorize the refund of taxes paid prior to 1977 on such cash allowances if those payments had been included in income on the officer's income tax return. Thus, the Act was restricted to cases where officers might experience hardships in paying income tax deficiencies assessed with respect to cash meal allowances.

Reasons for change

After reviewing the income tax treatment of cash meal allowances received by State police officers during 1970 through 1976, the committee believes that it is appropriate to amend Public Law 95–427 to allow a credit or refund of taxes paid by such an officer with respect to those cash meal allowances which were included in gross income for calendar years 1974, 1975, and 1976.

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[1] S. Rept. No. 1622, 83d Cong., 2d Sess. 190–191 (1954).

[2] H.R. Rep. No. 775, 85th Cong., 1st Sess. 7 (1957), 1958–3 C.B. 817.

Explanation of provision

The provision amends Public Law 95–427 to allow a credit or refund of taxes paid by State police officers with respect to cash meal allowances received during 1974, 1975, and 1976, whether or not the cash payments had been reported in gross income. As a result, the amended version of Public Law 95–427 will apply, on an elective basis, to all cash meal allowances received by all State police officers after 1973 and before 1978.

Effective date

The provision is effective upon enactment. The period of limitations for making refunds (or any other rule of law) will not operate to bar any claim for refund filed within one year of the date of enactment of the provision.

Revenue effect

It is estimated that the provision will result in a one-time decrease in budget receipts of $3 million in fiscal year 1981. This represents refunds or credits for taxes paid by State police officers with respect to cash meal allowances during 1974, 1975, and 1976 where the allowances were reported in income.

I. Clarification of Limitation on Deductibility of Certain Entertainment Facility Expenses Includible in Income of Recipient (sec. 109 of the bill and sec. 274 of the Code)

Present law

Prior to the enactment of the Revenue Act of 1978, expenses incurred with respect to entertainment facilities[1] were deductible if they were ordinary and necessary, the facility was used primarily for the furtherance of the taxpayer's business (i.e., more than 50 percent of the time that it was used), and the expense in question was related directly to the active conduct of the taxpayer's business. For this purpose, entertainment facility expenses included dues or fees paid to any social, athletic, or sporting club or organization. Dues or fees paid to professional associations, civic organizations, or to clubs operated solely to provide meals under circumstances normally considered to be conducive to business discussions generally were not considered to be entertainment facility expenses.

In determining whether an entertainment facility was used primarily for business purposes, all the taxpayer's ordinary and necessary business use of the facility was taken into account. Once it was determined that the facility was used primarily for business, the portion of the expenses which were related directly to the active conduct of the taxpayer's business could be deducted.

The Revenue Act of 1978 provided generally that no deduction was allowable for any entertainment facility expense. However, the Act retained a number of exceptions to the general rule that existed under prior law. One of these relates to expenses treated as employee compensation (Code sec. 274(e)(3)). Under this exception, expenses for goods, services, and facilities are not subject to the disallowance rules to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, as compensation to an employee on the taxpayer's return and as wages to the employee for purposes of income tax withholding. Thus, in the case of facility expenses which satisfy this exception, the Act retained the rules of prior law which formerly had applied to expenses treated as employee compensation.

The Technical Corrections Act of 1979 provided that the provision disallowing expenses for entertainment facilities did not apply to expenses paid or incurred in 1979 or 1980 where the entertainment facilities are provided to a nonemployee of the payor, the amount of the expense is includible in the gross income of the recipient of the entertainment facilities as compensation for services or as a prize or award, and the payor complies with any required reporting of information

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[1] An entertainment facility generally is any item of personal or real property owned, rented, or used by a taxpayer during the taxable year for, or in connection with, an activity normally considered to be of an entertainment nature.

(i.e., an information return (Form 1099) is furnished to the Internal Revenue Service (but not the recipient) for amounts in excess of $600).

Reasons for change

Present law already provides an exception to the disallowance rule for entertainment facilities in the case of facilities provided to employees. In such a case, the amount of the income is reported to the Internal Revenue Service regardless of the amount involved. The committee believes that a similar rule should apply to facilities provided to nonemployees so long as it is includible in the income of the recipient as a prize or award or for services rendered and information about the transaction is provided to the Internal Revenue Service (where required) regardless of the amount involved.

Explanation of provision

Under this provision, the general rule for the disallowance of expenses for entertainment, amusement, or recreation expenses (Code sec. 274(a)) does not apply to expenses which are includible in the gross income of the recipient of the entertainment, amusement, or recreation as compensation for services or as a prize or award under Code section 74. This provision will not apply if the taxpayer fails to include the amount in any information return (Form 1099) which is required to be filed with the Internal Revenue Service (or would be required except that the amount is less than $600).

Effective date

The provision is effective for expenses paid or incurred after December 31, 1980, in taxable years ending after that date.

Revenue effect

It is estimated that the provision will have no direct effect on budget receipts.

J. Prevention of Abuse of Certain Employee Benefit Requirements (sec. 201 of the bill and sec. 414(m) of the Code)

Present law

Under present law, the tax qualification of a pension, profit-sharing, or stock bonus plan, the tax treatment of a participant in a cafeteria or medical reimbursement plan, and the tax treatment of a simplified employee pension depends, in part, upon whether there is discrimination in favor of employees who are officers, shareholders, or highly compensated.[1] The rules are intended to encourage employers to provide benefits to rank-and-file employees.

In applying the discrimination test and certain other rules, all employees of a controlled group of corporations and all employees of commonly controlled trades or businesses, whether or not incorporated, are treated as employed by a single employer. For purposes of this rule, the existence of a controlled group of corporations is determined generally by reference to the section 1563(a) definitions of parent-subsidiary controlled group and brother-sister controlled group. The commonly controlled trade or business determination is made under regulations which are "based on principles similar to the principles" which apply in the case of controlled groups of corporations. (Code sec. 414 (b) and (c)).

Corporations in a brother-sister relationship are aggregated for plan purposes only if the same five or fewer persons who are individuals, estates or trusts own, among other things, *more* than 50 percent of the voting power (or value) of the stock in two or more corporations, and other conditions are satisfied. (Similar rules apply to unincorporated trades and businesses.)

These rules have been found to allow individuals to avoid the cost of providing benefits for rank-and-file employees by establishing individual corporations which then form a partnership of corporations. The partnership employs the rank-and-file employees. Because none of the corporations has *more* than a fifty percent interest in the partnership, the partnership is not a member of a group of commonly controlled trades or businesses. Therefore, the requirement of aggregation of employees for purposes of meeting the nondiscrimination and other rules does not apply and the plans established by the corporations need not provide coverage for the rank-and-file employees of the partnership. *Lloyd M. Garland, M.D., F.A.C.S., P.A.*, 73 T.C. 5 (1979).

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[1] More favorable tax treatment is provided in the absence of such discrimination. In the case of qualified pension, etc. plans, this treatment includes current deductibility of employer contributions (within limits), deferral of tax on employee benefits, estate and gift tax exclusions, and special 10-year income averaging and tax-free rollovers for lump-sum distributions. In the case of cafeteria and medical reimbursement plans, certain amounts paid by employers to or on behalf of employees are excluded from income. In the case of simplified employee pensions, larger deductions are allowed for certain contributions to an individual retirement account.

Reasons for change

The committee has determined that the use of separate entities should not permit the avoidance of employee benefit requirements designed to benefit rank-and-file employees under qualified pension, etc, plans, cafeteria and medical reimbursement plans, and simplified employee pensions.

Explanation of provision

The provision expands the classes of controlled groups of employers which are treated as a single employer in testing whether a pension, etc. plan, a cafeteria or medical reimbursement plan, or a simplified employee pension meets the nondiscrimination standards and other requirements of the tax law for favorable tax treatment.

In particular, under the provision, for purposes of the employee benefit requirements,[2] all employees of employers who are members of an affiliated service group are treated as if they are employed by a single employer. Under the bill, an affiliated service group consists of a specified service organization and one or more adjunct service organizations which are related to the specified service organization.

Under the provision, an employer is a specified service organization if its principal business consists of the performance of specified services, that is, services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, or any other field designated in Treasury regulations as a field in which separate organizations are used to avoid the employee benefit requirements. Under the provision, an employer is an adjunct service organization if a significant portion of its business consists of the performance of services for a specified service organization and if the services provided by the employer are of a kind historically performed by employees of that type of specified service organization.

Under the provision, an adjunct service organization is related to a specified service organization if (1) the specified service organization regularly uses the services of the adjunct service organization or is regularly associated with the adjunct service organization in performing specified services for third persons, and (2) 10 percent or more of the interests in the adjunct service organization is owned by persons who are (i) individuals performing specified services for the specified service organization or (ii) owners of the specified service organization.

In some cases, a specified service organization is owned by other specified service organizations or a combination of specified service organizations and individuals. Accordingly, in aggregating employers under the provision, all specified service organizations which are shareholders or partners in another specified service organization and which are regularly associated with the other specified organization in performing specified services for third persons are treated (1) as part of the other specified service organization, and (2) as members of an affiliated service group which includes the other specified service organization.

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[2] The employee benefit requirements consist of (1) in the case of qualified pension, etc. plans, the requirements of section 401(a)(3), (4), (7), and (16), and sections 410, 411 and 415 (these provisions relate to employee participation and eligibility, discrimination, vesting, and limits on benefits and contributions) and, in the case of a plan adopted by more than one employer, the requirements of section 412 relating to funding and the limitations of section 404(a) relating to employer deductions, (2) the requirements of section 105(h) for medical reimbursement plans, (3) the requirements of section 125 for cafeteria plans, and (4) the requirements of section 408(k) for simplified employee pensions.

Effective date

Generally, the provision applies for plan years ending after July 30, 1980. In the case of a plan in existence on July 30, 1980, the bill applies to plan years beginning after that date.

Revenue effect

It is estimated that the provision will increase budget receipts from the income tax by $50 million in fiscal year 1981, by $75 million in fiscal year 1982, and by $100 million annually in fiscal years 1983 through 1985.

K. Provisions Relating to Employee Stock Ownership and Caferteria Plans

1. Cash distribution option and put option for stock bonus plans (sec. 221 of the bill and new sec. 401(a)(23) of the Code)

Present law

Under present law, tax-qualified stock bonus plans must generally distribute stock to participants entitled to a distribution. However, a stock bonus plan which is either a tax credit employee stock ownership plan or an employee stock ownership plan may distribute cash, subject to a participant's right to demand that benefits be distributed in the form of employer securities.

Reasons for change

The committee has determined that a tax-qualified stock bonus plan generally should be eligible for the same rules with respect to cash and stock distributions to participants which govern tax credit employee stock ownership plans and employee stock ownership plans.

Explanation of provision

The provision would permit a tax-qualified stock bonus plan to distribute cash to a participant entitled to a distribution, subject to the participant's right to demand that benefits be distributed in the form of employer stock. If a stock bonus plan provides for cash distributions and if stock which is distributed is not readily tradable on an established market, the participant must have the right to require the employer to repurchase the stock.

Effective date

The provision is effective for plan years beginning after December 31, 1980.

Revenue effect

It is estimated that this provision will not have any revenue effect.

2. Special limitation for tax credit employee stock ownership plans and employee stock ownership plans (sec. 222 of the bill and sec. 415(c)(6)(A) of the Code)

Present law

Under present law, the dollar limitation on annual additions with respect to a participant in a tax credit employee stock ownership plan or an employee stock ownership plan may be increased, provided certain requirements with respect to allocations of employer contributions are met. The amount of such increase is the lesser of (1) the usual dollar limitation on annual additions to a participant's account or (2) the amount of employer securities contributed to the plan.[1]

Reasons for change

The committee has determined that it is necessary to make a clarifying change to the rule of present law which allows an increase in the limitation on contributions with respect to a participant in a tax credit employee stock ownership plan or an employee stock ownership plan. The change will make it clear that cash used to purchase employer securities is included for purposes of determining the increased limitation on annual additions to a participant's account.

Explanation of provision

Under the provision, the increase in the dollar limitation on annual additions with respect to a participant in a tax credit employee stock ownership plan or an employee stock ownership plan (provided certain requirements of present law are met with respect to allocations under the plan) would be the lesser of (1) the usual dollar limitation on annual additions to a participant's account, or (2) the amount of employer securities (or cash used to acquire such securities) contributed to the plan.

Effective date

The provision is effective for years beginning after December 31, 1980.

Revenue effect

It is estimated that this provision will not have any revenue effect.

3. Valuation of employer securities in tax credit employee stock ownership plans (sec. 223 of the bill and sec. 48(n)(B)(i) of the Code)

Present law

Under present law, the value of employer securities listed on a national exchange which are contributed to a tax credit employee stock ownership plan is the average of closing prices for such securities for the 20 consecutive trading days immediately preceding the due date for filing the employer's tax return for the year (including extensions).

Reasons for change

The committee has decided that the average closing price of employer securities during the 20 trading days preceding the date of contribution to a plan should be used to determine the value of those securities. The committee understands that the provision of present law for valuing readily tradable employer securities contributed to a tax credit employee stock ownership plan generally causes employers to postpone contributions of employer securities to a tax credit employee stock ownership plan until the due date for filing the employer's tax return.

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[1] Under prop. reg. § 1.415-6(g)(4)(i) if a contribution of cash is used to purchase employer securities not later than 30 days after the time for filing the employer's tax return (including extensions), then generally the cash contribution is treated as a contribution of employer securities for purposes of the special dollar limitation.

Explanation of provision

Under the provision, the value of employer securities listed on a national exchange contributed to a tax credit employee stock ownership plan is the average of the closing prices of such securities for the 20 consecutive trading days immediately preceding the date of contribution to the plan.

Effective date

The provision is effective for taxable years beginning after December 31, 1980.

Revenue effect

It is estimated that this provision will not have any revenue effect.

4. Participation of subsidiary corporation in a tax credit employee stock ownership plans (sec. 224 of the bill and sec. 409A(1)(4) of the Code)

Present law

The present-law rules governing tax credit employee stock ownership plans permit a 50-percent owned first-tier subsidiary of a parent corporation, and 80-percent owned second and lower-tier subsidiaries, to contribute employer securities of the parent corporation to a tax credit employee stock ownership plan.

Reasons for change

The committee believes that in the case where a first-tier subsidiary corporation owns 50 percent of a second-tier subsidiary and the first-tier subsidiary is 100-percent owned by a parent corporation, sufficient control of the second-tier subsidiary by the parent corporation exists to permit the second-tier subsidiary to contribute employer securities of the parent to a tax credit employee stock ownership plan maintained by the second-tier subsidiary.

Explanation of provision

Under the bill, if a parent corporation owns 100 percent of a first-tier subsidiary and the first-tier subsidiary owns 50 percent of a second-tier subsidiary, the second-tier subsidiary is allowed to contribute employer securities of the parent corporation to its tax credit employee stock ownership plan. In addition, parent stock could be contributed by 80-percent owned lower-tier subsidiaries in this chain.

Effective date

The provision is effective for taxable years beginning after December 31, 1980.

Revenue effect

It is estimated that this provision will not have any revenue effect.

5. Retirement savings by tax credit employee stock ownership plan participants (sec. 225 of the bill and sec. 410(b)(1) of the Code)

Present law

Under present law, an employee who is an active participant in a tax-qualified plan during a year is not eligible to make deductible contributions to an IRA (individual retirement account, individual retirement annuity, or retirement bond). Therefore, if an employee is an active participant in a tax-qualified tax credit employee stock ownership plan during a year such employee is ineligible for an IRA deduction. A plan can allow an employee to elect not to participate in a tax credit employee stock ownership plan in order to allow the employee to establish an IRA. However, the plan may be unable to satisfy certain minimum requirements of the Code relating to employee eligibility for plan participation (sec. 410(b)(1)) if substantial numbers of employees make such an election.

Reasons for change

The committee has determined that in the case where the only tax-qualified plan maintained by an employer is a tax credit employee stock ownership plan and if the value of employer securities allocated to employees' accounts under the tax credit employee stock ownership plan is relatively low, the minimum coverage requirements for tax-qualification of the tax credit employee stock ownership plan should be modified to permit employees to elect out of the plan, if the plan so provides, to establish IRAs.

Explanation of provision

Under the provision, the minimum coverage requirement for a tax credit employee stock ownership plan is changed, if a tax credit employee stock ownership plan is the only tax-qualified plan maintained by an employer. If employees are permitted to elect out of the tax credit employee stock ownership plan for the purpose of establishing IRAs, the tax credit employee stock ownership plan does not fail to meet the minimum coverage requirements of the Code if the plan benefits at least 50 percent of all employees (excluding employees who have not satisfied the minimum age and service requirements or who are otherwise permitted to be excluded), and if the total allocations under the tax credit employee stock ownership plan are equal to no more than two percent of the compensation of participating employees.

Effective date

The provision is effective for plan years beginning after December 31, 1980.

Revenue effect

It is estimated that this provision will decrease budget receipts by less than $5 million annually.

6. Cafeteria plans permitted to provide deferred compensation under rules applicable to cash or deferred profit-sharing and stock bonus plans (sec. 226 of the bill and secs. 125 and 401(k)(2) of the Code)

Present law

A cafeteria plan is an employee benefit plan under which a participant may choose between taxable benefits and one or more nontaxable fringe benefits. Under present law, cafeteria plans are not permitted to provide deferred compensation.

Reasons for change

Both cafeteria plans and cash or deferred profit-sharing plans allow employees to choose between current compensation and other benefits. The committee believes that present law is too restrictive because it does not permit employees to choose among currently taxable compensation, deferred compensation and fringe benefits under a single plan.

Explanation of provision

Under the provision, benefits under a cafeteria plan could include amounts which an employee covered by a profit-sharing or stock bonus plan with a qualified cash or deferred arrangement can elect to have the employer pay as a contribution to a trust under a profit-sharing or stock bonus plan. Amounts contributed by the employer, pursuant to the employee's election, will be treated as nontaxable benefits for purposes of the "cafeteria" plan rules.

Effective date

The provision is effective for taxable years beginning after December 31, 1980.

Revenue effect

It is estimated that this provision will decrease budget receipts by less than $5 million annually.

L. Election of Estate Tax Alternate Valuation (sec. 301 of the bill and sec. 2032 of the Code)

Present law

Under present law, the executor of a decedent's estate may value the property in the gross estate as of the date of the decedent's death or the "alternate valuation date," generally six months after the date of the decedent's death (Code sec. 2032). Alternate valuation provides estate tax relief when property in a decedent's estate declines in value shortly after the decedent's death. Alternate valuation must be elected by the executor on an estate tax return filed within nine months of the date of death or any period of extension granted by the Internal Revenue Service (Code sec. 2032(c)).

Under Code section 6081, the Internal Revenue Service may grant an extension of time to file an estate tax return. Except in the case of taxpayers who are abroad, the Internal Revenue Service has no discretionary authority to grant an extension exceeding six months.

Reasons for change

The committee believes that alternate valuation should not be denied because an estate tax return is filed late. Alternate valuation is a substantive provision of the estate tax law, and the procedural rules in the Internal Revenue Code currently provide for penalties in the case of late filing of an estate tax return and late payment of estate taxes.

Explanation of provision

The bill permits the election of alternate valuation on a timely filed estate tax return or the first late return filed. In the case of a timely filed return, an executor cannot change the election after the due date for the return has passed. In the case of a late return, the election cannot be changed after the first return has been filed.

Effective date

The provision applies to estates of decedents dying after December 31, 1980.

Revenue effect

This provision will have a negligible effect upon budget receipts.

M. Extension of Time To Amend Instruments of Charitable Split-Interests Trusts (sec. 302 of the bill and secs. 170, 2055, 2522 of the Code)

Present law

The Tax Reform Act of 1969 imposed new requirements that must be met in order for a charitable deduction to be allowed for income, gift, and estate tax purposes for the transfer of a split interest to charity (i.e., part charitable and part noncharitable). In the case of a remainder interest in trust, the interest passing to charity must be in either a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund. In the case of an "income" interest passing to charity (i.e., a charitable lead trust), the "income" interest must be either a guaranteed annuity or a fixed percentage of the fair market value of the trust (determined annually). These rules generally apply for estate and gift tax purposes with respect to decedents dying or transfers made after December 31, 1969, and for income tax purposes to contributions and transfers in trust after July 31, 1969. However, certain exceptions were provided in the case of wills executed, or property transferred in trust, on or before October 9, 1969. In general, these exceptions did not apply the new rules to these wills and revocable trusts until October 9, 1972 (unless the will was modified in the meantime), to allow a reasonable period of time to take the new rules into account.

In 1970, the Internal Revenue Service issued proposed regulations with respect to the new requirements for a charitable remainder annuity trust or unitrust (under sec. 664 of the Code). These regulations provided additional transitional rules allowing trusts created after July 31, 1969 (which did not come within the statutory exceptions) to qualify for an income, estate, or gift tax deduction if the governing instrument was amended prior to January 1, 1971. Subsequently, the date by which the governing instrument had to be amended was further extended by the Internal Revenue Service. On August 22, 1972, the Internal Revenue Service issued final regulations which further extended the date to December 31, 1972. On September 5, 1972, the Internal Revenue Service published Rev. Rul. 72-395, 1972-2 C.B. 340, which provided sample provisions for inclusion in the governing instrument of a charitable remainder trust that could be used to satisfy the requirements under Code section 664.

In 1974, Congress extended the date by which the governing instrument of a trust created after July 31, 1969, and before September 21, 1974, or pursuant to a will executed before September 21, 1974, could be amended (P.L. 93-483). Under that Act, if the governing instrument was amended to conform by December 31, 1975, to meet the requirements of a charitable remainder annuity trust or unitrust or pooled income fund, an estate tax deduction was allowed for the charitable remainder interest which passed in trust from the decedent even though the interest failed to qualify at the time of the decedent's death.

The Tax Reform Act of 1976 extended to December 31, 1977, the date by which the governing instrument of a charitable remainder trust created after July 31, 1969, and before December 31, 1977, must be amended in order to qualify as a charitable remainder annuity or unitrust or pooled income fund for purposes of the estate tax deduction. The Act also extended the date in the case of a trust created after July 31, 1969, pursuant to a will executed before December 31, 1977.

In the Revenue Act of 1978, Congress extended the amendment procedure to instruments establishing charitable lead trusts, and charitable remainder trusts in the case of income and gift taxes, which were created before December 31, 1977 (or created pursuant to a will executed before such date) which were amended (or judicial proceedings to amend were commenced) by December 31, 1978. As part of that provision, the Act extended until December 31, 1978, the time to amend (or to commence judicial proceedings to amend) instruments establishing charitable remainder trusts which were created before December 31, 1977 (or created pursuant to a will executed before such date) in order to conform such instruments to the requirements of the Tax Reform Act of 1969 for a charitable deduction to be allowed for estate tax purposes.

Reasons for change

Since the last extension enacted by Congress, a number of meritorious cases have come to the attention of the committee where amendment of the trust is the only method of preventing charity from bearing the additional estate taxes arising from the loss of the charitable deduction. In addition, the committee understands that the Treasury is studying the possibility of proposing a permanent rule on this issue. Consequently, the committee believes that an additional 2-year period, until December 31, 1980, is appropriate in order to permit the reformation of charitable split interest gifts.

Explanation of provision

The provision extends for 2 years (i.e., until December 31, 1980) the time to amend (or commence judicial proceedings to amend) instruments of both charitable lead trusts and charitable remainder trusts which were created before December 31, 1977 (or which were created pursuant to a will executed before such date) in order to conform such instruments to the requirements of the Tax Reform Act of 1969 for a charitable deduction to be allowed for income, gift, or estate tax purposes.

Effective date

The provision is effective, for estate and gift tax purposes, for decedents dying and transfers after December 31, 1969, and, for income tax purposes, for contributions and transfers in trust after July 31, 1969.

Revenue effect

It is estimated that the provision will decrease budget receipts by $8 million in fiscal year 1981, by $8 million in fiscal year 1982, and will not have any revenue effect thereafter.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Budget Effects

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of this bill, H.R. 7956, as reported.

It is estimated that the provisions contained in the bill will reduce budget receipts by $26 million in fiscal year 1981, $52 million in 1982, $73 million in 1983, $138 million in 1984 and $217 million in fiscal year 1985. These figures include $3 million for each provision which has been estimated at "less than $5 million". This amount represents the midpoint between zero and $5 million, rounded upward, and is used for budgetary purposes to take into account the revenue effects of those provisions for which only range estimates are available.

The Treasury Department agrees with this statement.

Vote of the Committee

In compliance with clause 3(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill. The bill, H.R. 7956, as amended, was ordered favorably reported by a recorded vote of 36 ayes and 0 noes.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 7956, as amended.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to various tax law provisions that the committee concluded that it is appropriate to enact the provisions contained in the bill. The provisions of the bill were the subject of public hearings by the Subcommittee on Select Revenue Measures in 1980 and were reported by the Subcommittee in H.R. 7956 as introduced. (See Subcommittee report dated August 22, 1980, WMCP: 96-70.)

New Budget Authority and Tax Expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to the existing law by this bill involved no new budget authority.

The bill involves new and increased tax expenditures of the following amounts for fiscal years 1981-85:

[Millions of dollars]

	Fiscal years				
	1981	1982	1983	1984	1985
Increases in tax expenditures [1]	72	125	171	236	315
Decreases in tax expenditures (sec. 201)	50	75	100	100	100
Net increases in tax expenditures	22	50	71	136	215

[1] Includes new tax expenditures resulting from section 102 (amortization of business startup costs): $22 million in 1981, $73 million in 1982, $121 million in 1983, $180 million in 1984, and $254 million in 1985.

Consultation with Congressional Budget Office on Budget Estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this report) and agrees with the methodology used and the resulting revenue estimates.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

Inflationary Impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * * * *

Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART IV—CREDITS AGAINST TAX

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Subpart B—Rules for Computing Credit for Investment in Certain Depreciable Property

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SEC. 48. DEFINITIONS; SPECIAL RULES.

(a) SECTION 38 PROPERTY.—

(1) IN GENERAL.—* * *

* * * * * * *

(4) PROPERTY USED BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—Property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter shall be treated as section 38 property only if such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(c)), the basis or cost of such property for purposes of computing qualified investment under section 46(c) shall include only that percentage of the basis or cost which is the same percentage as is used under section 514(b), for the year the property is placed in service, in computing the amount of gross income to be taken into

account during such taxable year with respect to such property. *This paragraph shall not apply to any property which is treated as section 38 property by reason of paragraph (1)(E) of this subsection and which is used by the tax-exempt organization pursuant to a lease.*

(5) **Property used by governmental units.**—Property used by the United States, any State or political subdivision thereof, any international organization (other than the International Telecommunications Satellite Consortium or any successor organization), or any agency or instrumentality of any of the foregoing shall not be treated as section 38 property. *This paragraph shall not apply to any property which is treated as section 38 property by reason of paragraph (1)(E) of this subsection and which is used by the governmental unit pursuant to a lease.*

* * * * * * *

(n) Requirements for Allowance of Employee Plan Percentage.—

(1) **In general.**—* * *

* * * * * * *

(6) **Definitions.**—For purposes of this subsection—

(A) **Employer securities.**—The term "employer securities" has the meaning given to such term by section 409A(l).

(B) **Value.**—The term "value" means—

(i) in the case of securities listed on a national exchange, the average of closing prices of such securities for the 20 consecutive trading days immediately preceding **[**the due date for filing the return for the taxable year (determined with regard to extensions)**]** *the date on which the securities are contributed to the plan*, or

(ii) in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations prescribed by the Secretary.

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Subchapter B—Computation of Taxable Income

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PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

Sec. 61. Gross income defined.
Sec. 62. Adjusted gross income defined.
Sec. 63. Taxable income defined.
Sec. 64. Ordinary income defined.
Sec. 65. Ordinary loss defined.
Sec. 66. Treatment of community income where spouses live apart.

* * * * * * *

SEC. 66. TREATMENT OF COMMUNITY INCOME WHERE SPOUSES LIVE APART

(a) General Rule.—If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

(b) Definitions.—For purposes of this section—

(1) Earned income.—The term "earned income" has the meaning given to such term by section 911(b).

(2) Community income.—The term "community income" means income which, under applicable community property laws, is treated as community income.

(3) Community property laws.—The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

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PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

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SEC. 105. AMOUNTS RECEIVED UNDER ACCIDENT AND HEALTH PLANS.

(a) Amounts Attributable to Employer Contributions.—* * *

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(h) Amount Paid to Highly Compensated Individuals Under a Discriminatory Self-Insured Medical Expense Reimbursement Plan.—

(1) In general.—In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not appy to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.

(2) Prohibition of discrimination.—A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—

(A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and

(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications.—

(A) In general.—A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—

(i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or

(ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated individuals.

(B) Exclusion of certain employees.—For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) employees who have not attained age 25;

(iii) part-time or seasonal employees;

(iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(v) employees who are nonresident aliens and who rereceive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits.—A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined.—For purposes of this subsection, the term "highly compensated individual" means an individual who is—

(A) one of the 5 highest paid officers,

(B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

(6) Self-insured medical reimbursement plan.—The term "self-insured medical reimbursement plan" means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual.—For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—

(A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A) paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction—

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups, *etc.*—All employees who are treated as employed by a single employer under subsection [(b) or (c)] *(b), (c), or (m)* of section 414 shall be treated as employed by a single employer for purposes of this section.

(9) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(10) Time of inclusion.—Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.

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SEC. 125. CAFETERIA PLANS.

(a) In General— * * *

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(d) Cafeteria Plan Defined.—For purposes of this section—

(1) In general.—The term "cafeteria plan" means a written plan under which—

(A) All participants are employees, and

(B) the participants may choose among two or more benefits.

The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits.

(2) Deferred compensation plans excluded.—The term "cafeteria plan" does not include any plan which provides for deferred compensation. *The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.*

* * * * * * *

(g) Special Rules.—

(1) Collectively bargained plan not considered discriminatory.—For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(2) Health benefits.—For purposes of subparagraph (B) of subsection (b) (1), a cafeteria plan which provides health benefits shall not be treated as discriminatory if—

(A) contributions under the plan on behalf of each participant include an amount which—

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the costs of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory.—For purposes of subparagraph (A) of subsection (b) (1), a classification shall not be treated as discriminatory if the plan—

(A) benefits a group of employees described in subparagraph (B) of section 410(b) (1), and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and the employment requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the employment requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups, etc.—All employees who are treated as employed by a single employer under subsection **[**(b) or (c)**]** *(b), (c), or (m)* of section 414 shall be treated as employed by a single employer for purposes of this section.

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec. 161. Allowance of deductions.
Sec. 162. Trade or business expenses.
Sec. 163. Interest.
Sec. 164. Taxes

Sec. 165. Losses.
Sec. 166. Bad debts.
Sec. 167. Depreciation.
Sec. 169. Amortization of pollution control facilities.
Sec. 170. Charitable, etc., contributions and gifts.
Sec. 171. Amortizable bond premium.
Sec. 172. Net operating loss deduction.
Sec. 173. Circulation expenditures.
Sec. 174. Research and experimental expenditures.
Sec. 175. Soil and water conservation expenditures.
Sec. 176. Payments with respect to employees of certain foreign corporations.
Sec. 177. Trademark and trade name expenditures.
Sec. 178. Depreciation or amortization of improvements made by lessee on lessor's property.
Sec. 179. Additional first-year depreciation allowance for small business.
Sec. 180. Expenditures by farmers for fertilizer, etc.
Sec. 182. Expenditures by farmers for clearing land.
Sec. 183. Activities not engaged in for profit.
Sec. 184. Amortization of certain railroad rolling stock.
Sec. 185. Amortization of railroad grading and tunnel bores.
Sec. 186. Recoveries of damages for antitrust violations, etc.
Sec. 188. Amortization of certain expenditures for child care facilities.
Sec. 189. Amortization of real property construction period interest and taxes.
Sec. 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly.
Sec. 191. Amortization of certain rehabilitation expenditures for certified historic structures.
Sec. 192. Contributions to black lung benefit trust.
Sec. 193. Tertiary injectants.
Sec. 194. Start-up expenditures.

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SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) Allowance of Deduction.—* * *

* * * * * * *

(f) Disallowance of Deduction in Certain Cases and Special Rules.—

(1) In general.—No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust.—

(A) Remainder interest.—In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.—No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) DENIAL OF DEDUCTION IN CASE OF PAYMENTS BY CERTAIN TRUSTS.—In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) EXCEPTION.—This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) DENIAL OF DEDUCTION IN CASE OF CERTAIN CONTRIBUTIONS OF PARTIAL INTERESTS IN PROPERTY.—

(A) IN GENERAL.—In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

[(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a contribution of—

[(i) a remainder interest in a personal residence or farm,

[(ii) an undivided portion of the taxpayer's entire interest in property,

[(iii) a lease on, option to purchase, or easement with respect to real property granted in perpetuity to an organization described in subsection (b)(1)(A) exclusively for conservation purposes, or

[(iv) a remainder interest in real property which is granted to an organization described in subsection (b)(1)(A) exclusively for conservation purposes.

[(C) CONSERVATION PURPOSES DEFINED.—For purposes of subparagraph (B), the term "conservation purposes" means—

[(i) the preservation of land areas for public outdoor recreation or education, or scenic enjoyment;

[(ii) the preservation of historically important land areas or structures; or

[(iii) the protection of natural environmental systems.]

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(h) QUALIFIED CONSERVATION CONTRIBUTION.—

(1) IN GENERAL.—For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) QUALIFIED REAL PROPERTY INTEREST.—For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) QUALIFIED ORGANIZATION.—For purposes of paragraph (1), the term "qualified organization" means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) CONSERVATION PURPOSE DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term "conservation purpose" means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) CERTIFIED HISTORIC STRUCTURE.—For purposes of subparagraph (A)(iv), the term "certified historic structure" means any building, structure, or land area which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in section 191(d)(2)) and is certified by the Secre-

tary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes.—For purposes of this subsection—

(A) Conservation purpose must be protected.—A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted.—In the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(6) Qualified mineral interest.—For purposes of this subsection, the term "qualified mineral interest" means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

[(h)] *(i)* Disallowance of Deductions in Certain Cases.—For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790).

[(i)] *(j)* Other Cross References.—

(1) For charitable contributions of estates and trusts, see section 642(c).

(2) For nondeductibility of contributions by common trust funds, see section 584.

(3) For charitable contributions of partners, see section 702.

(4) For charitable contributions of nonresident aliens, see section 873.

(5) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 6973 of title 10, United States Code.

(6) For treatment of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021(e) of that Act (22 U.S.C. 809(e)).

(7) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds, Federal Prisons" as gifts to or for the use of the United States, see section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s-4).

* * * * * * *

SEC. 194. START-UP EXPENDITURES.

(a) Election To Amortize.—Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such

period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the business begins).

(b) Start-Up Expenditures.—For purposes of this section, the term "start-up expenditure" means any amount—

(1) paid or incurred in connection with—

(A) investigating the creation or acquisition of a trade or business, or

(B) creating a trade or business, and

(2) which, if paid or incurred in connection with the expansion of an existing trade or business (in the same field as the trade or business referred to in paragraph (1)), would be allowable as a deduction for the taxable year in which paid or incurred.

(c) Election.—

(1) Time for making election.—An election under subsection (a) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the business begins (including extensions thereof).

(2) Scope of election.—The period selected under subsection (a) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

(3) Manner of making election.—An election under subsection (a) shall be made in such manner as the Secretary shall by regulations prescribe.

(d) Business Beginning.—For purposes of this section, an acquired trade or business shall be treated as beginning when the taxpayer acquires it.

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PART IX—ITEMS NOT DEDUCTIBLE

* * * * * * *

SEC. 274. DISALLOWANCE OF CERTAIN ENTERTAINMENT, ETC., EXPENSES.

(a) Entertainment, Amusement, or Recreation.— * * *

* * * * * * *

(e) Specific Exceptions to Application of Subsection (a).—Subsection (a) shall not apply to—

(1) Business meals.—Expenses for food and beverages furnished to any individual under circumstances which (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion.

(2) Food and beverages for employees.—Expenses for food and beverages (and facilities used in connection therewith) furnished on the business premises of the taxpayer primarily for his employees.

(3) Expenses treated as compensation.—Expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the

taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

(4) REIMBURSED EXPENSES.—Expenses paid or incurred by the taxpayer, in connection with the performance by him of services for another person (whether or not such other person is his employer), under a reimbursement or other expense allowance arrangement with such other person, but this paragraph shall apply—

(A) where the services are performed for an employer, only if the employer has not treated such expenses in the manner provided in paragraph (3), or

(B) where the services are performed for a person other than an employer, only if the taxpayer accounts (to the extent provided by subsection (d)) to such person.

(5) RECREATIONAL, ETC., EXPENSES FOR EMPLOYEES.—Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees (other than employees who are officers, shareholders or other owners, or highly compensated employees). For purposes of this paragraph, an individual owning less than a 10-percent interest in the taxpayer's trade or business shall not be considered a shareholder or other owner, and for such purposes an individual shall be treated as owning any interest owned by a member of his family (within the meaning of section 267(c)(4)).

(6) EMPLOYEE, STOCKHOLDER, ETC., BUSINESS MEETINGS.—Expenses incurred by a taxpayer which are directly related to business meetings of his employees, stockholders, agents, or directors.

(7) MEETINGS OF BUSINESS LEAGUES, ETC.—Expenses directly related and necessary to attendance at a business meeting or convention of any organization described in section 501(c)(6) (relating to business leagues, chambers of commerce, real estate boards, and boards of trade) and exempt from taxation under section 501(a).

(8) ITEMS AVAILABLE TO PUBLIC.—Expenses for goods, services, and facilities made available by the taxpayer to the general public.

(9) ENTERTAINMENT SOLD TO CUSTOMERS.—Expenses for goods or services (including the use of facilities) which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth.

(10) EXPENSES INCLUDIBLE IN INCOME OF PERSONS WHO ARE NOT EMPLOYEES.—Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included.

For purposes of this subsection, any item referred to in subsection (a) shall be treated as an expense.

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Subchapter D—Deferred Compensation, Etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General Rule

* * * * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are—

(A) officers,

(B) shareholders, or

(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410 **[**(b)(2)(A)**]** *(b)(3)(A)* and (C).

* * * * * * *

(22) If a defined contribution plan—

(A) is established by an employer whose stock is not publicly traded, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of said plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409A.

(23) A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409A(h)(2).

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

* * * * * * *

(d) ADDITIONAL REQUIREMENTS FOR QUALIFICATION OF TRUSTS AND PLANS BENEFITING OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1) In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, and exchanges). This paragraph shall not apply to a trust created or organized outside the United States before October 10, 1962, if, under section 402(c), it is treated as exempt from tax under section 501(a) on the day before such date; or, to the extent provided under regulations prescribed by the Secretary, to a trust which uses annuity, endowment, or life insurance contracts of a life insurance company exclusively to fund the benefits prescribed by the trust, if the life insurance company supplies annually such information about trust transactions affecting owner-employees as the Secretary shall by forms or regulations prescribe. For purposes of this paragraph, the term "bank" means a bank as defined in section 581, an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act),[*] a corporation which under the laws of the State of its incorporation is subject to supervision and examination by the commissioner of banking or other officer of such State in charge of the administration of the banking laws of such State, and, in the case of a trust created or organized outside the United States, a bank or trust company, wherever incorporated, exercising fiduciary powers and subject to supervision and examination by governmental authority.

(2) Under the plan—

(A) the employees' rights to or derived from the contributions under the plan are nonforfeitable at the time the contributions are paid to or under the plan; and

(B) in the case of a profit-sharing plan, there is a definite formula for determining the contributions to be made by the employer on behalf of employees (other than owner-employees).

Subparagraph (A) shall not apply to contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by subsection (a)(4), may not be used to provide benefits for designated employees in the event of early termination of the plan.

(3)(A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410(a)(3)).

(B) For purposes of subparagraph (A), the term "employee" does not include—

(i) any employee included in a unit of employees covered by a collective-bargining agreement described in section 410[(b)(2)(A),] *(b)(3)(A)*, and

(ii) any employee who is a nonresident alien individual described in section 410[(b)(2)(C).] *(b)(3)(C)*.

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) Individual Retirement Account.—* * *

* * * * * * *

(k) Simplified Employee Pension Defined.—

(1) In general.—For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity with respect to which the requirements of paragraphs (2), (3), (4), (5), and (6) of this subsection are met.

(2) Participation requirements.—This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 25, and

(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410 [(b)(2).] *(b)(3)*.

(3) Contributions may not discriminate in favor of the highly compensated, etc.—

(A) In General.—The requirements of this paragraph are met with respect to a simplified employee pension for a calendar year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any employee who is—

(i) an officer,

(ii) a shareholder,

(iii) a self-employed individual, or

(iv) highly compensated.

(B) Special rules.—For purposes of subparagraph (A)—

(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410 **[**(b)(2)**]** *(b)(3)*, and

(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.

(C) Contributions must bear a uniform relationship to total compensation.—For purposes of subparagraph (A), employer contributions to simplified employee pensions shall be considered discriminatory unless contributions thereto bear a uniform relationship to the total compensation (not in excess of the first $100,000) of each employee maintaining a simplified employee pension.

(D) Treatment of certain contributions and taxes.—Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of this paragraph, be taken into account as a contribution by the employer to an employee's simplified employee pension. If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.

(E) Integrated plan defined.—For purposes of subparagraph (D), the term "integrated plan" means a plan which meets the requirements of section 401(a), 403(a), or 405(a) but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account.

* * * * * * *

SEC. 409A. QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

(a) Tax Credit Employee Stock Ownership Plan Defined.—* * *

* * * * * * *

(l) Employer Securities Defined.—For purposes of this section—

(1) In general.—The term "employer securities" means common stock issued by the employer (or by a corporation which is a

member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily common stock.—If there is no common stock which meets the requirements of paragraph (1), the term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases.—Noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable) and if such conversion is at a conversion price which (as of the date of the acquisition by the tax credit employee stock ownership plan) is reasonable. For purposes of the preceding sentence, under regulations prescribed by the Secretary, preferred stock shall be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

[(4) Controlled group of corporations defined.—] *(4) Application to controlled group of corporations.—*

(A) In general.—For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) [Common parent may own only] *Where common parent owns at least 50 percent first tier subsidiary.—* For purposes of subparagraph (A), if the common paren owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated a includible corporations.

(C) Where common parent owns 100 percent of first tie subsidiary.—For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock in a first tier subsidiary, and if the first tier subsidiary ow directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the percent test of section 1563(a) if the second tier subsidiar were the common parent) shall be treated as includib corporations.

* * * * * * *

Subpart B—Special Rules

SEC. 410. MINIMUM PARTICIPATION STANDARDS.

(a) PARTICIPATION.—

* * * * * * *

(b) ELIGIBILITY.—

(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under section 401(a) which benefits either—

(A) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation, or

(B) such employees as qualify under a classification set up by the the employer and found by the Secretary not to be discriminatory in favor of employees who are officers, shareholders, or highly compensated.

(2) SPECIAL RULE FOR CERTAIN PLANS.—A trust which is part of a tax credit employees stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of paragraph (1) if—

(A) it benefits 50 percent or more of all the employees who are eligible under the plan (excluding employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation), and

(B) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year.

[(2)**]** *(3)* EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of **[**paragraph (1)**]** *paragraphs (1) and (2)*, there shall be excluded from consideration—

(A) employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee respresentatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.

*   *   *   *   *   *   *

SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) SERVICE FOR PROCESSOR EMPLOYER.— * * *

*   *   *   *   *   *   *

(1) MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLA ASSETS.—A trust which forms a part of a plan shall not constitute qualified trust under section 401 and a plan shall be treated as not described in section 403(a) or 405 unless in the case of any merger o consolidation of the plan with, or in the case of any transfer of asset or liabilities of such plan to, any other trust plan after September 2 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, or transfer which i equal to or greater than the benefit he would have been entitled to recieve immediately before the merger, consolidation, or transfer (if th plan had then terminated). This paragraph shall apply in the case o a multiemployer plan only to the extent determined by the Pensio Benefit Guaranty Corporation.

(m) EMPLOYEES OF AN AFFILIATED SERVICE GROUP.—

(1) IN GENERAL.—For purposes of the employee benefit requirements listed in paragraph (7), all employees of the members o an affilated service group shall be treated as employed by a singl employer.

(2) AFFILIATED SERVICE GROUP.—For purposes of this subsectio the term "affiliated service group" means a group consisting of—

(A) a specific service organization, and

(B) one or more adjunct service organizations which ar related to the specific service organization.

(3) SPECIFIED SERVICE ORGANIZATION DEFINED.—For purposes o this subsection—

(A) IN GENERAL.—The term "specified service organization" means an organization the principal business of whic is the performance of one or more specified services.

(B) SPECIFIED SERVICES DEFINED.—The term "specified services" means services in any of the following fields:

(i) health,
(ii) law,
(iii) engineering,
(iv) architecture,
(v) accounting,
(vi) actuarial science,
(vii) performing arts,
(viii) consulting, or
(ix) any other service field which the Secretary designates by regulations as a field in which separate organizations are used to avoid any employee benefit requirement listed in paragraph (7).

(4) ADJUNCT SERVICE ORGANIZATION DEFINED.—For purposes of this subsection, the term "adjunct service organization" means an organization a significant portion of the business of which is the performance of services—

(A) for the specified service organization, and

(B) of the kind historically performed by employees of this type of specified service organization.

(5) RELATIONSHIP OF ORGANIZATION.—For purposes of this subsection, an adjunct service organization is related to a specified service organization if—

(A) the specified service organization regularly uses the services of the adjunct service organization or is regularly associated with the adjunct service organization in performing specified services for third persons, and

(B) 10 percent or more of the interests in the adjunct service organization is owned by persons who are—

(i) individuals performing specified services for such specified service organization, or

(ii) owners of such specified service organization.

(6) CERTAIN SHAREHOLDERS AND PARTNERS IN SPECIFIED SERVICE ORGANIZATION TREATED AS PART OF AFFILIATED SERVICE GROUP.—For purposes of this subsection, all specified service organizations which are shareholders or partners in a specified service organization and which are regularly associated with the specified service organization in which they are shareholders or partners in performing specified services for third persons shall be treated—

(A) as part of the specified service organization in which they are shareholders or partners, and

(B) as members of an affiliated service group which includes the specified service organization in which they are shareholders or partners.

(7) EMPLOYEE BENEFIT REQUIREMENTS.—For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), and (16) of section 401(a),

(B) sections 408(k), 410, 411, and 415,

(C) section 105(h), and

(D) section 125.

(8) OTHER DEFINITIONS.—For purposes of this subsection—

(A) ORGANIZATION DEFINED.—The term "organization" means a corporation, partnership, or other organization.

(B) OWNERSHIP.—In determining ownership, the principles of section 267 shall apply.

(9) PREVENTION OF AVOIDANCE.—The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance with respect to service organizations, through the use of separate organizations, of any employee benefit requirement listed in paragraph (7).

SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.

(a) GENERAL RULE.— * * *

* * * * * * *

(b) NO COMMUNITY MAY CONCURRENTLY RECEIVE GRANTS UNDER SECTIONS 101 AND 102.—A grant or commitment may not be made under section 102 for any unit of local government (or any combination in which that unit is consolidated for purposes of this title) during any fiscal year in which a grant or commitment is made under section 101 for such unit of government (or combination).

(c) CONSIDERATION OF APPLICATIONS.—The Secretary shall prescribe procedures and criteria applicable to the consideration and approval of applications for grants under this title. Such procedures and criteria shall ensure that—

(1) the applications of all units of local government are given equal consideration without regard to the types of such units and the sizes of the communities involved; and

(2) consideration is given to the fact that the limited administrative resources of small units of local government (including the recognized bodies of Indian tribes) place such units at a disadvantage in preparing applications for grants.

(d) VERIFICATION OF COST ESTIMATES.—(1) The Secretary may not approve any application for a grant under this title unless the Secretary has taken reasonable steps to verify cost estimates, including the reasonableness thereof, and other information contained in the application.

(2) Before entering into any contract under this title for the purposes of carrying out such verification activities or other functions under this title, the Secretary shall determine that the work to be performed is appropriate to be performed by contract rather than by Federal employees, that such work cannot reasonably be performed by officers and employees of the Department of Energy under the jurisdiction of the Secretary, and that the work is needed.

(e) ADJUSTMENT OF LIMITATIONS.—(1) The Secretary may make grants in excess of the limitations contained in sections 101(c) and 102(b) in severe hardship cases.

(2) The Secretary shall, by rule, prescribe criteria for determining applicants which are in a class of severe hardship. Such criteria shall take into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of the costs, and such other factors that the Secretary deems appropriate.

(f) FINAL ACTION ON GRANT APPLICATIONS TO OCCUR WITHIN 4 MONTHS—The Secretary shall take final action on any application for a grant under this title as soon as possible after the application is filed but not later than 120 days after the application is submitted, except that the Secretary may extend such period to a specified date with respect to any application if the Secretary publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension, and if such extension does not extend beyond 24 months after the application was filed.

(g) RECORDS.—(1) The Secretary shall require all units of local government receiving grants under this title to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the respective portions of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The Secretary shall prescribe only such records as are necessary for any such audit and shall minimize the burden imposed on such recipients to create and retain records.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the comptroller General may be related or pertinent to such grant.

(h) EXCLUSION OF RESEARCH AND DEVELOPMENT FUNDING.—Nothing in this title shall be construed to authorize funds for research or development purposes.

SEC. 106. ANNUAL REPORTS.

The Secretary shall, within one year after the date of the enactment of this title and annually thereafter while funds are available under this title, submit to the Congress a detailed report of the actions taken under this title in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such report shall show the allocations made (including the allocations made for units of local government in each State) and include information on the types of actions taken, with funds allocated, and an estimate of the energy savings achieved.

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TITLE II—IMPROVEMENTS IN ADMINISTRATION OF EXISTING STATE ENERGY PLANNING PROGRAMS

SEC. 201. CONSOLIDATION AND COORDINATION OF CERTAIN STATE ENERGY GRANT PROGRAMS.

(a) Consolidation.—Notwithstanding any other provision of law, a State may submit an annual consolidated application requesting financial assistance under part D of title III of the Energy Policy and Conservation Act. The portion of the consolidated annual application for each program shall be approved by the State official or State agency specifically authorized to implement that program under State law.

(b) Uniform Time Periods.—To enable a State to submit a consolidated application described in subsection (a) for a uniform time period, the Secretary and the appropriate State official or State agency, by mutual agreement, may amend the program time period and any other administrative provision associated with financial assistance awarded under such part D before the approval of the consolidated application, and may agree that the unexpended balance of any funds made available under such programs may continue to be available for the purposes for which those funds were appropriated.

(c) Records and Accounting.—The Secretary shall prescribe rules providing, to the maximum extent practicable, uniformity, consolidation, and coordination in the records and accounting procedures required under programs under such part D.

(d) Effect on Existing Administrative Authority.—Nothing in this section shall be construed as limiting or restricting the authority of the Secretary to undertake consolidation of the administration of other financial assistance programs under the jurisdiction of the Secretary, to the extent consistent with other provisions of law.

(e) Transition.—(1) The Secretary may prescribe rules providing for the orderly transition from multiple applications for financial assistance for State energy programs under such part D to the consolidated applications described in subsection (a) of this section.

(2) In the case of agreements for financial assistance entered into under such subpart D before the date of the enactment of this Act, the Secretary may—

(A) consolidate into one agreement any such agreements; and

(B) amend the time period covered by such agreements.

SEC. 202. REPROGRAMING OF CERTAIN ENERGY GRANT FUNDS.

Nothwithstanding any other law, the Secretary shall approve a State's request in a consolidated annual application under section 201 to use financial assistance appropriated for the administrative costs of a State energy program for expenditure for preparation of a State emergency conservation plan under section 212 of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8512).

TITLE III—STATE LONG-RANGE ENERGY PLANS

SEC. 301. GRANTS FOR STATE LONG-RANGE PLANNING.

(a) Grants.—In accordance with this section, and such regulations as the Secretary may prescribe, the Secretary may commit to make, and make, a grant to any State for the costs of preparing, modifying, or administering a State long-range energy plan for such State.

(b) State Long-Range Energy Plan.—(1) For purposes of this section, a State long-range energy plan is a plan approved by the Governor which contains—

(A) an estimate of the then current energy supply and demand within the State, and a projection of energy supply and demand in the State over the 5-year period following the year in which an application is filed under subsection (e);

(B) a description of the types of energy use affected by the plan, and a statement of State objectives for energy conservation and renewable resource use for such types of energy usage during the 3-year period following the year in which the plan is filed under subsection (e), and thereafter;

(C) a description of, and cost estimates for, the programs the State proposes in order to achieve conservation of energy and increased renewable resource use; and

(D) a description of the ways in which the State will monitor and assess progress in meeting such objectives.

(2) In developing a long-range energy plan, each State shall consider—

(A) programs by natural gas utilities and by electric utilities regulated by the State to promote energy conservation and the use of renewable resources;

(B) State tax measures or other financial incentives to encourage energy conservation and use of renewable resources;

(C) measures designed to conserve energy used for transportation; and

(D) other programs to promote energy conservation and the use of renewable resources.

(3) In addition to the requirements of paragraph (1), each State long-range energy plan shall, in accordance with such regulations as the Secretary may prescribe, provide for coordination among Federal, State, and local energy use and conservation programs, activities, and objectives.

(c) Amount of Grant.—The amount of any grant under this section for any State shall not exceed 50 percent of the reasonable costs paid or incurred by the State in preparing a long-range energy plan. The availability of financial assistance to a State under other provisions of Federal law shall be taken into account in determining the amount of any grant under this section to that State.

(d) Application; Opportunity for Public Comment.—(1) A grant under this section shall be provided only upon the approval by the Secretary of an application filed by a State containing such information as the Secretary may require.

(2) A State shall provide for reasonable notice and opportunity for public comment on any application before it is submitted under this section.

(e) Period Allowed for Filing Application.—(1) No grant may be made under this section unless an application, approved by the Governor, for a grant under this section for that State is filed with the Secretary during the 6-month period beginning on the date on which funds are first appropriated for this title.

(2) The Secretary may extend the period for filing an application under this subsection.

(f) Application Approval.—(1) After consideration of any application under this section and subject to the availability of funds, the Secretary may approve an application for a grant under this section if the Secretary finds that the requirements of this title regarding the application have been met.

(2) The Secretary shall approve or disapprove an application within 120 days after the date it is received by the Secretary.

(3) Any grant under this section shall be made on terms and conditions which the Secretary determines are appropriate and which are consistent with the purposes of this Act. The terms and conditions of any grant for the preparation or modification of a long-range energy plan shall—

(A) provide that the State log-range energy plan involved will be completed and submitted to the Secretary on the date specified in the grant application (which shall not be later than 9 months after the date of the grant approval);

(B) require that, before submittal to the Secretary, the State—

(i) will make copies of the proposed plan available to the public and provide an opportunity (of not less than 90 days' duration for oral or written public comment, and

(ii) may make such modifications in the plan as the State considers appropriate on the basis of the public comments; and

(c) require implementation of any aspects of the plan which do not require substantial cost to the State or any person affected by the plan.

(4) In the case of any State, the Secretary may extend the date by which any action is required to be taken under paragraph (2) or (3).

(g) Review and Approval of State Long-Range Energy Plans.—(1) The Secretary shall review a timely submission of a State long-range energy plan. Within 120 days after receipt of such plan, the Secretary shall approve or disapprove a State long-range energy plan or a modification thereof if the Secretary determines that such plan or a modification—

(A) provides for energy conservation;

(B) encourages the use of renewable resources through technologies which are commercially available; and

(C) complies with the requirements of this section and is consistent with Federal laws and programs.

(2) A State long-range energy plan shall be approved by the Secretary for a period of 2 years or such other period as the Secretary may determine appropriate for the implementation of such plan.

(3) The Secretary may extend the date by which approval or disapproval is required under paragraph (1) with respect to any particular plan or modification.

(h) REGULATIONS.—The Secretary shall initially prescribe and make effective the regulations required to implement this section not later than 60 days after the date of the enactment of this Act.

SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There is authorized to be appropriated to the Secretary not to exceed $100,000,000 for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984, for purposes of this title.

(b) LIMITATIONS.—(1) Not more than 50 percent of the funds appropriated pursuant to subsection (a) for any fiscal year and expended for work performed for the Secretary may be expended for work performed by contract.

(2) If so specified in an appropriation Act, any amount appropriated pursuant to this title may remain available without fiscal year limitation.

(3) Any authority under this title to enter into a contract, commitment, grant agreement, or other agreement obligating the United States to make outlays pursuant to this title may be exercised only to such extent as may be provided in advance in appropriation Acts.

SEC. 303. ALLOCATION OF GRANTS.

(a) ALLOCATION.—The Secretary shall allocate the sums available for financial assistance under this title among the States in any fiscal year in the following manner:

(1) 75 percent shall be allocated on the basis of the resident population of the States; and

(2) 25 percent shall be allocated equally among the States.

(b) REALLOCATION.—Funds allocated under this title to any State for a fiscal year but not obligated by the Secretary in that fiscal year may at the option of the Secretary be reallocated among the States for the following fiscal year.

SEC. 304. GENERAL PROVISIONS REGARDING GRANTS.

(a) TECHNICAL ASSISTANCE.—Upon request, the Secretary may provide, subject to the availability of personnel and funds, information and technical assistance (including model laws and model State energy plans) to States for purposes of aiding such States in applying for grants under this title and in preparing, modifying, administering, and implementing State energy plans for which grants are provided under this title.

(b) RECORDS.—(1) The Secretary shall require all States receiving grants under this title to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the respective portions of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audits, evaluation examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such grant.

(c) EXCLUSION OF RESEARCH AND DEVELOPMENT FUNDING.—Nothing in this title shall be construed to authorize funds for research or development purposes.

Amend the title so as to read:

A bill to provide financial assistance for the establishment and implementation of energy plans by units of local government, and for other purposes.

PURPOSE AND SUMMARY OF THE BILL

The purpose of this legislation is to:

(1) encourage the conservation of energy and the use of renewable energy resources by providing financial assistance for the

establishment and implementation of energy plans by units of local government;

(2) provide for the coordination and consolidation of existing Federally-assisted State energy programs; and

(3) encourage energy conservation and the use of renewable energy resources by providing financial assistance for the establishment of long-range State energy plans.

BACKGROUND AND NEED

INTRODUCTION

The record before the Committee reveals unanimity among all witnesses as to the need for a major Federal effort to encourage effective conservation of energy and increased use of renewable resources.

The Nation is currently consuming 6.6 billion barrels of oil annually, 45 percent of which is imported. This reliance upon foreign oil not only jeopardizes United States security, it is generally recognized as a major contributor to inflation in the United States. Since January, 1979, the price of oil imported from OPEC nations, 30 percent of the oil consumed in the United States, has increased by over 100 percent and now accounts directly for almost $100 billion annually almost twice the size of the United States balance of trade deficit. By increasing the cost of United States products this indirectly accounts for a substantially greater share of the deficit.

The current national goal of producing 2 million barrels of synthetic fuel daily by 1990, while desirable and necessary, will not reduce United States dependence upon OPEC oil by enough to assure United States security or to significantly reduce the inflationary effects of current prices or future increases. The evidence before the Committee clearly indicated that conservation of energy and increased use of renewable energy resources can make a significant contribution toward achieving these goals.

Testifying before the Committee, the Honorable John G. Hutchinson, Mayor, City of Charlestown, West Virginia, and Chairman of the Energy and Environment Committee of the U.S. Conference of Mayors, cited the assertion of the recent report of the Harvard Business School, *Energy Future*, that conservation could save the energy equivalent of 4.4 million barrels of oil per day by 1990.

Thus, if the United States were to achieve the 2 million barrel per day goal of the synthetic fuel program and the 4.4 million barrel per day goal of the conservation program, energy consumption could be reduced by the equivalent of 6.4 million barrels per day in just 10 years. Congressman Donald Pease of Ohio noted that the 4.4 million barrel per day savings by 1990 would, at today's prices, "result in a net savings of $230 billion to the American economy". Evidence before the Committee indicates that if conservation is construed to include increased use of renewable resources, the savings could be substantially larger.

Although there were differences in emphasis, there was general unanimity among witnesses as to the requirements of an effective program to encourage energy conservation and the increased use of renewables.

FEDERAL-LOCAL PROGRAMS

The program should include substantial Federal assistance for planning and implementation for units of local government. The Honorable James Conway, Mayor of St. Louis, Missouri, and Second Vice President of the National League of Cities said:

> We strongly support a program that establishes direct Federal, local relationship in the development and implementation of energy conservation and renewable resource development strategies.

The Honorable John G. Hutchinson explained:

> * * * [T]here can be no substitute—none—for direct Federal-city relationship in energy conservation and development. The States can help, and we hope they will, and we believe we can be helpful to the States in development of their State plans, but the size of the job, the need to move resources quickly, and apply them where people live, makes a direct Federal-city partnership of sufficient scale the essential element in our moving forward in the energy area.

Joan Shorey, representing the Solar Lobby added:

> * * * [W]e urge you either to expand the provisions of H.R. 4382 to substantially support local planning or to back community management legislation. In either case there must be provisions to assure that funds get to local governments and the community groups. In either case, funding for community level planning and programming should go directly to the local government, not indirectly through the States.

Although he preferred to have the States play a major role in allocation of the funds, even Lex Hester, Director of the State Energy Office of the State of Florida and spokesman for the National Governors' Association said:

> Our first recommendation deals with the role of local governments. Although there are a number of proposals dealing with these issues, we strongly urge that any local government program be made an integral part of EMPA.

The Committee received abundant evidence as to the potential that units of local government have to plan and implement programs to conserve energy and to increase the use of renewables.

The Honorable Harvey Ruvin, Commissioner Dade County, Florida, speaking on behalf of the National Association of Counties, reported:

> Local governments are sources of innovation. Communities in New England are looking at the many small dams in the region as a source of hydro-electric power. In addition, the region is using a readily available renewable resource, wood, on a growing scale to supplement or supplant heating oil and other conventional heating fuels. Dade County, Florida, is building the world's largest resource recovery/energy from solid waste plant and has implemented a comprehensive energy plan which will save the County $7 million a year

when in full operation. Los Angeles County, California, is extracting methane gas from its landfills and has installed a computerized system for controlling heating, ventilating and air-conditioning in its buildings. And, Oakland, Michigan has developed a comprehensive energy plan and is looking at ways to encourage district heating in the County.

Mr. Hutchinson submitted a report on the actions of 20 units of local government demonstrating the breadth of innovative potential at the local level:

REPRESENTATIVE LOCAL GOVERNMENT ENERGY PLANS

ALBUQUERQUE, N. MEX.

As part of its community energy conservation program, the city of Albuquerque has a 15 member citizens committee appointed by the Mayor to advise him on all energy related issues. This committee has developed an 11 point plan for energy conservation, which will serve as the blueprint for an information program to city residents. In line with this program, the city has designated a display trailer to be used at public schools, which identifies a number of ways to conserve energy.

In other energy programs, Albuquerque is working on an evaluation of zoning ordinances to ensure solar access. It has also established a land-use policy to discourage additional sprawl by filling in those areas of the city not yet developed. The city has also been encouraging the use of low technology solar heating systems, and has two solar heated buildings, one with a payback period on the system of 4 months, the other with a payback of less than 4 years.

ANN ARBOR, MICH.

The city of Ann Arbor has established an Energy Advisory Group composed of several employees of city departments, which provides technical and planning support to the energy coordinator for all city energy programs. The energy staff is now conducting building audits. Future programs will center around energy management for existing buildings, vehicle fleet, street lighting, employee awareness and information dissemination, and general contingency plans to deal with energy supply shortages.

Preliminary energy audits in 43 city-owned facilities are complete with summaries of energy systems consumption of fuel and electricity for the past year, energy systems capacity, and building structure characteristics and occupancy factors.

A total energy plan for existing city facilities has been prepared for the Mayor, City Council, City Administrator, and Department of Management Personnel. An energy management program has started to identify and classify all no-cost and minimal cost operations and maintenance changes which have the potential to save a minimum of 20 percent of building energy consumed.

ATLANTA, GA.

The City of Atlanta recently adopted a comprehensive energy management plan called Program for Atlanta to Conserve Energy (PACE). The policy and programs are designed to reduce energy consumption in all city government operations and facilities, and are expected to result in significant savings for the city, both in energy and dollars.

The PACE program commits the city to efficient energy usage throughout its government functions. The policy specifies that the City will set informal energy consumption goals, purchase energy efficient equipment and materials, use the most current energy conservation techniques, maintain and operate city buildings to consume minimum amounts of energy, conduct energy audits of all city buildings, promote solid waste energy conservation systems, and pursue innovative use of alternative technologies.

Atlanta is sponsoring community awareness programs throughout the school system and through neighborhood planning units. In addition the city is working with the Georgia Power Company in conducting energy audits in city buildings and holding energy conservation seminars for city employees.

BALTIMORE, MD.

The city of Baltimore is already well known for its innovative approaches to energy conservation. In 1977, the Baltimore city school system was ranked as one of the leaders in energy conservation in Maryland. Since then, Baltimore schools have embarked on a further program of policy enforcement and equipment modification, which has resulted in a 6 percent ($300–400,000) reduction in energy costs in fiscal 1978. An 18–20 percent reduction ($1,500,000) in energy usage is projected for fiscal 1979, based on data for the first nine months of the year.

Baltimore operates the first commercial-scale waste-to-energy pyrolysis system which converts municipal solid waste to a low BTU gaseous fuel, with process steam sold to a Baltimore Gas and Electric Company district heating facility. A four-week test run processing 600–650 tons per day resulted in a daily average income of $4,300 from the sale of steam. The city is now considering the recovery of methane from existing landfills, and is in the data-collecting stage.

BIRMINGHAM, ALA.

In response to the energy crisis, the city of Birmingham established an energy committee with the task of developing methods to reduce energy consumption in city services and the community by 15–20%. The group is made up of 9 members of the community. At present the city is attempting to upgrade the building code to include energy conservation techniques. Also, in conjunction with the Regional Planning Association, the city has established an ongoing vanpool and carpool program, and is working on a computer match system for citizens interested in carpooling. The main focus of the citizens energy committee is to adopt a more energy efficient policy for city buildings.

BOISE, IDAHO

The most vital energy conservation program in Boise is the planned geothermal development in the city. The City of Boise's program to harness geothermal energy will heat eighteen city, state, Federal and private buildings, eight square blocks of an urban renewal area (the new Downtown Mall), and the campus of Boise State University. Heating a total of two million square feet of building space, the system will reduce fuel costs by 25 percent and save the equivalent of 20,000 barrels of oil per year. A parallel program administered by Warm Springs Hot Water District will develop a separate geothermal heating system for residential areas. The total program costs will be $15 million.

Boise has two citizens' energy committees with about 75 members each, set up in conjunction with geothermal development and the Downtown Mall. One group focuses on transportation issues; the other on alternative energy sources, including conservation measures. The committees are very active, and meeting attendance is high.

In addition to the downtown geothermal program, Boise operates a carpool and vanpool matching system. Participants to date include five major corporations, and city, county, state and federal employees.

The downtown development has provided Boise citizens with a unique opportunity to learn about not only geothermal energy, but other energy conservation measures and alternative energy sources as well. The high interest in the community is reflected in the information requests to the city libraries, state library, and the city Geothermal Office. The city plans to produce a documentary movie about geothermal energy to serve as an educational and publicity tool for the general public, local government and private business.

CLEARWATER, FLA.

The city of Clearwater, Fla., began energy conservation efforts in 1975, focusing on two major consumption areas—city vehicles and street lighting. By 1977 the vehicle fleet program resulted in a 31 percent increase in fleet miles per gallon, saving 175,000 gallons of fuel ($80,000).

These programs were brought under centralized control with the creation of a city Energy Office in 1977. The Office set as its goal, reduction ". . . of the city's energy consumption by 25 percent without compromising the safety or health of the public or the efficiency of the city's employees." Program results include an estimated savings of $150,000 per year from the building retrofit and efficiency program—a reduction of 3 million kilowat hours per year. The home energy audit program has been discontinued due to the loss of CETA workers who performed the audits, but during the program, 750 homes were audited. These homes averaged a use of 2000 kilowatt hours per month prior to audits, and reduced use by 15 percent as a result of audit improvements. A plan to convert to high pressure sodium streetlights is estimated to save another 3 million kilowatt hours per year.

DAYTON, OHIO

The city of Dayton has been actively involved in a community energy conservation effort since 1977. Dayton is one of 17 local governments in the United States chosen to participate in the Comprehensive Community Energy Management Program (CCEMP) sponsored by DOE. This program is designed to help local communities identify, evaluate and implement energy conservation methods and to manage local energy supply and use.

As a result of the CCEMP grant, Dayton was able to formulate a citizens committee of 22 members from all walks of life. The committee is subdivided into a steering committee and an action committee which discuss energy policy actions for both private and public groups, and will play a key role in the development of a comprehensive, long term energy policy.

There are two basic components of the program: energy auditing and projecting consumption levels for both public and private consumption up to the year 1985 to determine supplies and to prevent shortfalls.

In addition, the city of Dayton in conjunction with its congresssional representative has established energy workshop seminars to discuss nut and bolts techniques of energy conservation for citizens. Also, the city has a mini-computer to centralize lighting in municipal buildings and schools.

DENVER, COLO.

The city of Denver is developing an overall comprehensive plan for city energy use. This plan when implemented will address the energy impact of all facets of city planning including zoning and land use. This plan also will address the development of a citizens advisory committee on energy. At present the city has an in-house energy committee, which is developing a plan for cutting back city government energy usage by 10 percent within each department. The city also has developed an extensive van pool program and is cooperating with the state government on a computer match system for citizens interested in carpooling.

GREENSBORO, N.C.

The city of Greensboro operates an employer-based carpooling system, which was initiated in November, 1977. Beginning with municipal employees, the program has now expanded to include major city businesses. In March, 1979, the city contacted the area's top 24 companies. So far, 17 companies have responded positively, with a range of from 56% to 69% of their employees expressing interest in participating in the program. Twelve of these companies are now carpooling, while the remainder are completing the computer matching process. These companies employ from 500 to 5,000 employees each. The city plans in the future to include smaller employers in the program, as well as employment centers such as the downtown area.

In 1977, the city initiated one of the nation's most effective home audit programs. City firefighters, already familiar with home construction, were trained by the local utility to conduct residential energy audits. Such an approach ensures much higher acceptance by homeowners without any diminution in fire protection of greatly increased cost to the taxpayer. The firemen collect the raw data, have it analyzed by the city's utility staff to determine what energy conservation measures are called for, and return in two to three weeks with the results of the analysis. Homeowners are also provided with a "how-to" booklet on energy conservation prepared by the city and a flier from the Greensboro Jaycees explaining the civic group's insulation assistance fund for those who cannot afford to have the work done themselves. To date, 14,000 homeowners have been contacted, and 12% have accepted.

HARTFORD, CONN.

The city of Hartford has developed a comprehensive approach that touches all levels of municipal policy, including zoning, land use, transportation, economic development, and education.

Hartford established a citizens energy corporation hire and train unemployed city residents to retrofit existing structures (both city owned and private). In addition to the energy corporation, the city has set aside funds to create a community based economic development corporation that will manufacture and install solar energy collectors. Once the programs are in place, the city expects to provide between 200 and 225 jobs for city residents. This effort will produce an added benefit of helping city residents lower their energy consumption and costs.

Also, the city is involved in an effort to minimize automobile traffic downtown. It is considering the feasibility of closing a series of streets to cars. Only pedestrians, buses, and emergency vehicles would have access to these streets. Hartford also has had much support for its park and ride programs, designed to offer cheaper and faster public transportation than the automobile.

KANSAS CITY, MO.

Involvement of Kansas City citizens in energy conservation programs began in 1974 with "Operation Button-Up". During its two years of operation, the program was responsible for circulation of more than two million mail inserts with utility bills, development of a lecture kit and speakers bureau, production of several radio and television public service announcements, work with the Kansas City Star on a special energy edition, development of a fall home tour featuring energy conservation, placement of several articles in regional magazines on the benefits of energy conservation, and creation of a Button-Up kit that enabled homeowners to assess their own needs for home energy conservation.

Operation Button-Up has been followed up by several other programs directed to homeowners—the home weatherization program and two energy demonstration and conservation homes. The weatherization program improved over 1,395 homes by July, 1979, with an average investment of $450 per home. The program evaluation shows that average fuel consumption has decreased by 21.95%, the average dollar savings per house is $71.61, and the average return on investment is 4.9 years. The demonstration homes are two older houses that have been retrofitted with energy saving appliances, insulation and other energy conservation measures to provide the public with testing of conservation features, training in "how-to" measures, and examples of the savings possible using energy conserving measures.

Kansas City also has an extremely successful carpool and vanpool program. A carpool matching program begun in 1974 elicited interest from one-quarter of the city employees. Vanpools were added in 1978. Five vans are operating at present. Also in 1978, a ride-sharing grant from the Department of Energy enabled the city to expand the vanpool matching program to area corporations.

LOS ANGELES, CALIF.

During the 1972–73 embargo, Los Angeles cut overall energy consumption by 20 percent under a voluntary cutback program. City conservation programs have since been enhanced. Monthly electrical consumption reports show some departments have decreased usage to under the rates during 1972–1973.

In 1978 and 1979, the Airport cut energy use to 7.5 percent below embargo rates. The Water and Power department was 15.8 percent below, and the Harbor department was 52.8 percent below. Other departments added new buildings but increased usage to only 6.2 percent above embargo rates.

Vehicle fuels consumption for the first nine months of fiscal year 1979 is five percent below the rate for the previous 11 months. Twenty-six vehicles are using gasohol, and the city is seeking to expand this program. Three buildings are to be dedicated shortly, all using solar systems: a firehouse (to be the prototype for all future Los Angeles firehouses); an office building; and a demonstration single family house.

LOUISVILLE, KY.

The City of Louisville has set itself the goal of reducing energy consumption by 6.8 percent by 1981 over the base year of 1976. Efforts to reach this goal include transportation programs and information programs.

Transportation programs include a 50 percent subsidy of mass transit fares by city employees, free parking lots for city employee carpools, and an innovative city bus system. The bus system includes double-deck buses to increase passenger miles per gallon. Ridership is up an estimated 18 percent over last year.

Louisville participates actively in the Jefferson County Energy Commission. The Energy Commission provides community residents with energy conservation information. Recent projects include a survey of local businesses to determine which had undertaken exemplary energy conservation measures. A list of those local businesses which have implemented energy conservation measures was distributed to citizens, along with estimates of energy savings. Awards were given for the most outstanding efforts. The Jefferson County Energy Commission also prepared a brochure listing all energy-related businesses (e.g., insulation sales and installation, solar products and installation), which has been distributed to the public. Other publicity efforts include an audiovisual program shown to several thousand people each year, radio and television talk shows on energy, and an energy seminar co-sponsored by Indiana University.

METROPOLITAN MIAMI/DADE COUNTY, FLA.

Energy conservation efforts in Metropolitan Miami/Dade County, Fla., began in 1973–1974 in response to the gasoline crisis. The most significant program developed at that time was a gas rationing program, which remains in effect today. Under the program, coupled with increased maintenance and a switch to smaller city fleet cars, the city vehicle fleet gasoline consumption in 1978 was 37 percent lower than in 1972. A Comprehensive Energy Management Program (CEMP) was adopted in December, 1977, and the Dade County Planning Department developed a report, "Energy Conservation: Proposed Goals and Policies," for review by the Board of County Commissioners in July, 1979. The payoff for major planning efforts in Dade County comes in the form of electricity and gasoline consumption savings, as these are the two primary energy sources. In 1976 Dade County consumed about one-half a billion kilowatt hours of electricity. The conservation program put into effect in 1977 is estimated to have saved one hundred and thirty million kilowatts that year. This savings converts to 216,607 barrels of crude oil, or $2.8 million at the 1977 prices.

NEW ORLEANS, LA.

New Orleans began a moderately successful Energy Conservation Program in 1973. An Energy Management Program was subsequently mandated in 1978, and a Citizens' Committee for Energy Management was formed to assist in the planning for the Management Program. The City Energy Management Task Force has proposed a board program that would encompass such areas as conservation, alternative energy sources, development of local unconventional energy sources (such as geopressurized natural gas), and such administrative policy areas as zoning and building codes and rate restructuring. The City of New Orleans has a municipal utility, New Orleans Public Service, Inc. (NOPSI), which can provide the kind of support for municipal energy management experienced by other cities with municipal utilities such as Seattle and Portland. NOPSI now provides the bulk of information on energy conservation distributed to New Orleans citizens, and offers a home audit service.

OAKLAND, CALIF.

The city of Oakland, Calif. operates a wide-ranging energy conservation program, including a centralized maintenance facility for fire and police vehicles, a passive solar design for a new recreation center, exploring cogeneration, and using more open windows rather than air conditioning in city buildings. The most significant program is the retrofit of city street lights. The program involves converting the 23,563 lights in Oakland's system to high-pressure sodium vapor lamps from mercury-vapor lamps. While maintaining lighting levels in accordance with recommended standards, the new system will use 55 percent less electricity than the old (which comprised 70 percent of city electrical expenditures).

The total conversion to this new lighting technology will reduce the annual cost of the service 75 percent—from $2,040,000 to $503,000 per year. This is a savings of 17 million kilowatts per year.

PORTLAND, OREG.

The city of Portland has just passed a comprehensive city energy plan with a goal of decreasing energy use throughout the city by 30 percent by 1995. The projected savings from this reduction for the city and its residents is about $126 million a year based on current prices. The program itself was developed through a citizen energy policy committee composed of representatives from business, labor, industry, government and neighborhood groups. The city also developed information and education programs to notify citizens of the plan. Newspapers, radio and television were used for this outreach program, as well as a series of 35 briefing sessions throughout the city with neighborhood business, industry and others. This comprehensive plan will cover all areas of city planning which might impact on energy.

Besides this comprehensive city plan, Portland has a number of energy programs already in place. Life-cycle costing has been made a consideration in all purchasing decisions by the city government. Half of one-percent of the city's general funds and other special funds have been set aside for energy conservation investments—which currently yields about $700,000 a year for energy conservation projects on the part of city departments, such as better building insulation and a heat recovery unit for the city paint shop.

ROCKVILLE, MD.

The City of Rockville's city-wide energy conservation efforts have been supported by an Energy Advisory Committee which draws upon the pool of technical expertise available in the city. The Committee provides advice on all energy plans and proposals such as the consideration of methane recovery from city landfill sites and purchase of dual fuel cars for the city fleet.

The Rockville Energy Office operates an energy information center to respond to citizen inquiries as well as producing a newsletter column, a slide show on home energy conservation, and seminars for residents and local businesses. The office held an Energy Fair to coincide with Sun-Day to promote energy activities. Programs offered by the city include weatherization of low-income homes and home energy audits conducted by the local utility. The office is working in cooperation with the County on a vanpool program.

Current projects include an evaluation of energy conservation measures to be incorporated in the redevelopment of the town center, solar heating for city swimming pools, and development of a solar access zoning code. Present building codes are written to incorporate energy conservation measures in new buildings.

SAN ANTONIO, TEX.

The city of San Antonio is developing mechanisms for coping with energy issues as a whole. A Comprehensive Residential Management Program (CRMP) is being drafted to include not only energy conservation and alternative energy sources, but solid waste disposal possibilities such as refuse-derived fuel and wastewater management issues. A proposal has been sent to the Department of Energy for support of a complete revision of building and zoning codes to encourage energy conservation and alternative energy sources through siting, solar access zoning, etc. Under this proposal, a citizens' energy commission would be instituted with the assistance of the local university.

A major community energy education program is conducted by the city utility. In addition to supply information, the utility conducts audits of residences and commercial buildings.

The City provides a carpool computer matching service, and is adding a vanpool service as well. City employees receive subsidies for bus commute fares.

SEATTLE, WASH.

The city of Seattle is in the process of implementing perhaps one of the most advanced energy building codes in the country. This code is expected to result in an overall reduction in projected electricity usage of about 3 percent by 1990. A citizens advisory committee on energy usage has responsibility for recommendations to the city in energy management and planning. Seattle's municipal utility has a citizens advisory group as well. In light of possible heating oil shortages this winter, Seattle is in the process of developing contingency plans for actions the city can take to help residents affected by shortages and high prices of heating supplies.

Seattle also has developed a number of other innovative programs in the area of energy conservation and alternative technologies. For example, the city is leasing solar equipment to the community through the municipal utility. There also are many other solar incentive programs and demonstrations. The city has developed a free ride zone in the downtown area to encourage residents not to bring their cars into the area.

ST. PAUL, MINN.

The city of St. Paul, Minnesota coordinates energy conservation efforts through a strong system of district councils—seventeen "mini-city halls"—which review and comment on all city functions such as licensing and zoning. The city has recently applied for a Department of Energy grant to revise the building and zoning codes to encourage increased energy conservation. The designation of appropriate lots for underground or solar construction now is conducted with the assistance of the district councils. The councils distribute energy conservation information, such as the results of the infrared thermography flyover conducted in 1977 to demonstrate the sources of heat loss in residential and commercial buildings in St. Paul. One of the district councils will be holding an Energy Fair this October, which will provide information on energy conservation and alternative energy sources. It will provide exhibitors a place to display and demonstrate energy conservation products.

The city has been encouraging energy conservation through several other means, including a vanpool program which is working through employers. The 3M corporation offered the first of these company-sponsored vanpool programs in 1973, which has grown to 100 vans serving more than 1,000 of the company's 10,000 employees. The city plans to complement the existing vanpool programs with a downtown shuttle which will ferry passengers from fringe parking lots to downtown work and shopping areas. The mayor rides the bus once a week as an example.

These communities were exceptional only in that they had the resources to carry out planning and implementation programs, unlike the vast preponderance of other units of local government in the United States today.

CONSOLIDATION OF EXISTING FEDERAL-STATE PROGRAMS

There was also general agreement among the witnesses as to the need to coordinate existing programs of Federal assistance to the States to allow for single applications, single reports, and consolidation of filing dates, bookkeeping and record keeping, generally, and on the need to make funds available to enable the States to carry out their responsibilities under the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8512).

STATE LONG-RANGE PROGRAMS

There was general unanimity that Federal assistance to the States for programs relating to energy should be flexible enough to allow the States to meet their individual needs and take maximum advantage of their individual needs.

It is the conviction of the Committee that S. 1280, as reported, accomplishes all of these goals.

Committee Cost Estimate

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the following statement is made regarding the cost of this legislation:

Fiscal year:	Millions
1982	$240
1983	240
1984	240
1985	---
1986	---

The Committee has not received an estimate of such costs from a government agency.

Report from the Congressional Budget Office

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1280, the Community and State Energy Planning Assistance Act of 1980.

Congressional Budget Office—Cost Estimate

1. Bill number: S. 1280.

2. Bill title: Community and State Energy Planning Assistance Act of 1980.

3. Bill status: As ordered reported by the House Committee on Interstate and Foreign Commerce, August 28, 1980.

4. Bill purpose: Title I of the bill establishes a grant program for the development and implementation of energy conservation plans by

local governments. Plans must include measures to encourage the use of renewable resources, to conserve energy in local government buildings, and to coordinate with other state and federal conservation programs. Assistance to local governments to implement approved conservation plans is contingent on commitments to continue implementation after the expiration of federal aid and on the availability of additional funds to carry out the proposed activities. Title II of the bill provides for the consolidation of applications for financial assistance for state energy programs. Title III establishes a grant program to assist states in developing and administering long-range energy plans. The plan must contain a five-year projection of the state's energy supply and demand, a description of energy conservation objectives, and proposals for programs to achieve conservation and renewable source use goals.

For the local government grant program, the bill authorizes the appropriation of an amount not to exceed $420 million for the three-year period between fiscal years 1982 and 1984. In addition, the bill authorizes $100 million for each of fiscal years 1982, 1983, and 1984 for state long-range energy planning.

5. Cost estimate:

	Millions
Estimated authorization level:	
Fiscal year:	
1981	----
1982	$240
1983	240
1984	240
1985	----
Estimated outlays:	
Fiscal year:	
1981	----
1982	45
1983	195
1984	240
1985	195

In addition to the amounts authorized in the bill, it is expected that preparation for implementation of the bill will cost DOE approximately $300,000 in fiscal year 1981. In addition to the outlays shown in the above table, it is estimated that $45 million will be spent in fiscal year 1986.

The costs of this bill fall within budget function 270.

6. Basis of estimate: For the purpose of this estimate, it is assumed that the $420 million authorized for the local government grant programs for the three-year period between fiscal years 1982 and 1984 will be appropriated in equal amounts for each of the three years. The estimate also assumes that the funds authorized to be appropriated for state conservation planning for fiscal years 1982, 1983, and 1984 will be appropriated by the start of each fiscal year.

The outlay estimate for the local government grant program is based on the historic spending pattern for energy conservation grant programs in the Department of Energy. Because of the time required to prepare and process grant applications and to identify funding sources necessary to meet the matching requirements, it is expected that outlays in fiscal year 1982 will be relatively small. Outlays are expected to be approximately $15 million in fiscal year 1982, $105 million in fiscal year 1983, $140 million in fiscal 1984 and $125 million in fiscal year 1985. The remainder, $35 million, is expected to be spent in fiscal year 1986.

The outlay estimate for long-range planning grants to states is based on information from the Department of Energy about similar state energy programs. Since the bill requires that applications for federal aid be submitted within six months after the appropriation of funds and that plans be completed within nine months of the grant awards, outlays from each year's appropriation are expected to occur primarily in a two-year period. Outlays for this program are estimated to be $30 million in fiscal year 1982, $90 million in fiscal year 1983, $100 million in fiscal year 1984, and $70 million in fiscal year 1985. The remainder, $10 million, will be spent in fiscal year 1986.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 23, 1980, CBO transmitted a cost estimate for S. 1280, the Energy Management Partnership Act, a related bill ordered reported on May 15, 1980 by the Senate Committee on Energy and Natural Resources. Unlike the House bill, the Senate version provides funds to continue existing programs as well as to establish new state and local conservation initiatives. The total authorization level for the Senate bill was estimated to be $525 million for fiscal years 1981 through 1983. The House bill specifies a total authorization level of $720 million for fiscal years 1982 through 1984.

9. Estimate prepared by: Linda Alperin.

10. Estimate approved by:

C. G. Nuckols
(For James L. Blum, Assistant Director for Budget Analysis).

Committee Consideration

The bill, S. 1280, was passed by the Senate on July 25, 1980, and was referred to the Committee on Interstate and Foreign Commerce and the Committee on Science and Technology on July 29, 1980. It represented a very substantial revision of the programs proposed by the Administration under H.R. 13420, in the 95th Congress, and H.R. 4382, introduced in the 96th Congress by Mr. Staggers and Mr. Fuqua, by request, on June 7, 1980, and a number of related proposals.

The Subcommittee on Energy and Power and the Subcommittee on Energy Development and Applications, of the Committee on Science and Technology, held joint hearings on H.R. 4382 and related legislative proposals on October 31, 1979, and on February 10, 1980. It received testimony from fifteen witnesses, including Senator Paul Tsongas and Representatives Donald Pease, Elizabeth Holtzman and Les AuCoin. Dr. Maxine Savitz, Acting Assistant Secretary for Conservation, Solar and Energy, testified for the Department of Energy, accompanied by J. Michael Power, Director, Office of Policy, Planning and Evaluation; Thomas D. Tatum, Director, Institutional Liaison and Communications; and Judith M. Liersch, Director of the Energy Extension Service. The Subcommittees also heard from representatives of the National Governors' Association, the National League of Cities, the U.S. Conference of Mayors and the Solar Lobby. The non-Federal witnesses included two Mayors, the Honorable John Hutchinson of Charlestown, West Virginia, and the Honorable James

Conway of St. Louis, Missouri; City of Long Beach City Council Member, Marc Wilder; Special Asssistant for Energy, City of New York, Robert Hertzog; and the Chairman of the Energy Policy Committee on the National Association of Counties, Mr. Harvey Ruvin.

A clean bill, H.R. 7945, was introduced on August 19, 1980, by Mr. Staggers (for himself, Mr. Dingell, Mr. Ottinger, Mr. Moffett, Mr. Wirth, Mr. Markey, Mr. Swift, Mr. Maguire, Mr. Gore and Mr. Leland) and was referred to the Committee on Interstate and Foreign Commerce and, thereafter, to the Subcommittee on Energy and Power. H.R. 7945 represented revisions of the programs proposed in H.R. 4382, revisions designed to reflect the improvements suggested by witnesses in the hearing record.

The Subcommittee met in open markup session on H.R. 7945 on August 20 and 22, 1980. It adopted four amendments with respect to (1) the definition of "energy conservation", (2) the topics that may be included in a local energy plan, and (3) the period of time provided for the opportunity for oral or written comment upon an application for a grant for the preparation of a local energy plan. Three amendments were defeated and one was withdrawn.

On May 28th, the Committee met in open markup on the bill One amendment, *en bloc*, with respect to the special needs of small communities and recognized bodies of Indian tribes was adopted. One amendment was withdrawn.

H.R. 7945 was then approved by the Committee by a voice vote, a quorum of the Committee being present. Thereafter the bill, S. 1280, was called up, approved by the Committee by voice vote, and a motion to strike all after the enacting clause and insert in lieu thereof the text of the bill, H.R. 7945, was approved and the bill was ordered reported to the House by a voice vote, a quorum of the Committee being present.

REPORT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(b) of Rule X of the Rules of the House of Representatives, the Committee states that no report has been received from the Committee on Government Operations regarding oversight findings and recommendations with respect to matters covered in this bill. During this Congress, the Subcommittee on Energy and Power has conducted numerous hearings dealing with various aspects of State energy efforts and one day of hearings dealing with energy conservation efforts of local communities.

The Subcommittee on Oversight and Investigations of the Committee has conducted no oversight investigations into matters covered by this bill.

AGENCY VIEWS

At the time the bill was ordered reported, the Committee had not received the views of any Government Department or Agency.

EFFECT OF THE LEGISLATION ON INFLATION

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported Bill:

The legislation authorizes assistance for local and State efforts to encourage the conservation of energy and the use of renewable energy resources. The effect of expenditures made under the Bill will be to reduce energy consumption, and the Committee has stated its intent that priority be given to programs that will result in the greatest energy savings for the amount of money invested, as well as to programs that will result in a reduction in the consumption of oil. Since the consumption of oil, and most particularly the consumption of imported oil, is generally acknowledged to be a major contributor to recent unacceptably high rates of inflation, the Committee projects that the long-range effect of the Bill will be significant reduction in one major inflationary pressure upon our economy.

This is supported by experience with the Schools and Hospitals program authorized by title III of EPCA, upon which this legislation is modeled. The Department of Energy has reported savings of the equivalent of 39,000 barrels of oil each year for each $1 million invested in the program. These annual savings are not one-shot deals, but are continued throughout the years and are added to as the program reaches additional buildings. Experience with this program to date shows that the total Federal and non-Federal expenditures under the Schools and Hospitals program will be repaid in toto in three years with the result that the reductions in expenditures for energy by buildings that have utilized the program will have a cumulative and continuing anti-inflationary impact on our economy thereafter.

Finally, the legislation, without authorizing additional expenditures, permits the consolidation and coordination of existing Federally-financed State energy planning and implementation programs and provides for the use of existing funds to administer State emergency conservation programs under Section 212 of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8512). The effect of these two provisions is expected to result in considerable savings to the States through improved efficiency and direct reduction in expenditures.

The Committee expects that, while the implementation of the assistance programs under titles I and III may have some small inflationary impact in the first year of operation (1982), this will be more than offset by the reductions in consumption of imported oil and the other savings that will result from reduced energy consumption and increased use of renewable energy resources, in general. It also expects that this anti-inflationary effect will be cumulative over the years that the program is funded and will be permanent.

SECTION-BY-SECTION ANALYSIS OF S. 1280

Section 1 provides that the Act may be called the "Community and State Energy Assistance Planning Act of 1980" and sets forth the Table of Contents of the Act.

Section 2 sets forth the definitions of terms used in the Act. The Committee defined "conservation" as meaning "a reduction of inefficient energy use or an increase in the efficiency of energy use." With this novel definition it is the Committee's intent to encourage reduction in energy consumption but not to such an extent as to cause unnecessary inconvenience or discomfort to individuals for whose benefit the energy is being consumed. Thus, for example, the Committee recognizes that many buildings use energy for illumination far in excess of any reasonable need. The definition should be interpreted to encourage reduction in energy consumption, such as illumination in such buildings, but not to the degree that would cause unnecessary inconvenience or discomfort to the average user of the facility.

TITLE I—COMMUNITY PLANNING ASSISTANCE

The title authorizes the Secretary of Energy (Secretary) to make grants to units of local government to assist in local community energy planning and to implement community energy plans.

Section 101. Grants to Assist Local Community Energy Planning

Subsection (a) authorizes the Secretary to commit to make, and to make, a grant to applicants for the costs of preparing a local energy plan.

Subsection (b) specifies that for the purpose of the section a local energy plan is a plan adopted by a unit of local government or a combination of such units which, when implemented, will provide for energy conservation, encourage the use of renewable resources through technologies which are commercially available, or result in a combination of such conservation and such encouragement. The section also requires that each local energy plan shall include recommendations for conservation of energy in buildings owned by any unit of local government covered by the plan and provide for coordination with Federal and State energy use and conservation programs, activities and objectives. In adopting this provision regarding coordination the Committee intended that the Secretary should construe the requirement that the plan be "coordinated with * * * State energy use and conservation programs, activities and objectives" to mean that if a Governor of a State within the jurisdiction of which an applicant falls, after reviewing the plan submitted to such Governor pursuant to subsection (d)(3), identifies a State program, activity objective of the State with which the local energy plan is inconsistent and the Secretary finds that such a program, activity or objective exists and that the proposed plan is inconsistent with it, the Secretary shall not approve the plan until such time as the proposed plan or the State program, activity or objective, has been modified to remove the inconsistency.

By adopting language requiring that each local energy plan shall "include recommendations for conservation of energy used in buildings owned by any unit of local government covered by the plan as well as energy used in vehicle fleet and equipment operation, street and building lighting, traffic management, heating and cooling and other municipal services and activities," the Committee was only listing some typical areas within the jurisdiction of local units of government which should be considered in preparing a plan. The list is not intended to be exhaustive nor is it to be construed as limiting local energy plans to governmental functions. Quite the contrary, the Committee intends that plans should include any activity under the jurisdiction of a unit of local government and even consider activities not currently under such jurisdiction where conservation or increased use of renewable resources could be encouraged or achieved by bringing such activity under such jurisdiction.

Subsection (c) specifies that the amount of a grant under the section shall not exceed 80 percent of the reasonable costs paid or incurred by the applicant in preparing a local energy plan and that the amount of Federal assistance available to any applicant under other provisions of Federal law shall be taken into account in determining the amount of any grant made under the section to that applicant. It also requires the Secretary to establish criteria for determining the amount of any grant under the section and specifies that the criteria shall include the population and other relevant characteristics of the applicant.

In adopting the provision requiring account to be taken of assistance available to any applicant under other provisions of Federal law, the Committee intended that this should be used to prevent duplication of Federal funding for an application, or part of an application, but not to prevent coordination or combination with or use of other Federal funds, which will add to an applicant's ability to plan for increased conservation of energy or use of renewable resources, or both.

Subsection (d) specifies that a grant under the section can only be made upon approval by the Secretary of an application containing the information required under subsection (f) of the section. It also requires that an applicant shall provide reasonable notice and opportunity for public comment on any application before such application is submitted to the Secretary and that the applicant will provide a copy of a proposed application to the Governor of the State in which the unit or units of local government covered by the plan are located.

Recognizing that the requirement of formal public hearings sometimes results in unnecessary delay and complication, the Committee did not adopt such a requirement. However, it is the express intent of the Committee that the Secretary affirmatively encourage public hearings and that, unless he finds that such hearings would result in unnecessary complication or delay, he give priority to applications which have been the subject of a public hearing or hearings in some reasonable form.

Subsection (e) provides that no grant may be made under the section unless written notice of the intent to apply for such funds is filed with the Secretary during the 6-month period beginning on the date on which funds are first appropriated for the title and the grant application is filed with the Secretary during the 12-month period after such notice of intent is filed. It also provides that the Secretary may extend the periods for filing any notice of intent or application.

Subsection (f) requires that any application for a grant under the section must include:

(1) a statement of the purposes of the plan for which a grant is sought under the section, including a description of the types of energy use the applicant anticipates will be considered under the plan;

(2) a commitment that upon the development of the plan the applicant will undertake oversight and review of the plan and any activities taken under such plan, together with such assurances as the Secretary considers appropriate that resources will be available for such purposes;

(3) a statement of the source of funds for covering the costs of preparing the plan which are not covered by any grant under the title;

(4) a summary of the comments on the application received by the applicant under subsection (d)(2); and

(5) such other information as the Secretary may require.

The subsection also requires that the applications should be simple and in concise form and require only such information as may be necessary to allow the Secretary to efficiently and effectively consider the application. This requirement was adopted by the Committee in recognition of the limited resources of many small communities and recognized bodies of Indian tribes and is designed to assure that such communities and tribes are fully able to compete successfully against larger units of local government.

The statement of the source of funds for covering the cost of the plan other than funds to be provided by a grant under the title should include in-kind contributions and matching services that the Secretary is to consider as a part of the non-Federal share of the costs of preparing the plan.

Subsection (g) provides that, subject to the availability of funds, the Secretary may approve a grant under the section if he finds that the requirements of the title regarding applications has been met. In determining whether to approve a grant, the section requires the Secretary to take into account whether the unit or units of local government involved in the application have energy plans and, if so, the adequacy of those plans. Through this provision, the Committee intended to permit the Secretary to make planning grants to an applicant even if the unit, or units, of local government covered by the application had an energy plan, if that energy plan does not meet the requirements of the title. It also intended to permit the Secretary to make a grant to an applicant representing a consolidation of more than one unit of local government even though individual units may have energy plans meeting the requirements of the title, if the Secretary finds that such grant is necessary to prepare a consolidated application for the units involved.

The subsection requires that any grant under the section be on terms and conditions which the Secretary determines to be appropriate and which are consistent with the purposes of the Act. The terms and conditions shall provide that the local energy plan will be completed and submitted to the Secretary on the date specified in the grant application and no later than 24 months after the date of grant approval. It also requires that before the grant is submitted to the Secretary the applicant will make copies available to the public and provide an opportunity of not less than 60 days for oral or written public comment and provides that the applicant may make such modifications in the plan as the applicant deems appropriate on the basis of public comment and requires implementation of aspects of the plan which do not require substantial cost to the applicant or any person affected by the plan.

As pointed out above, because the requirement of formal public hearings sometimes results in unnecessary delay and complication, the Committee did not adopt such a requirement. However, it is the express intent of the Committee that the Secretary affirmatively encourage public hearings and that, unless he finds that such hearings would result in unnecessary complication or delay, he give priority to plans which have been the subject of a public hearing in some reasonable form.

In requiring that any aspects of a plan which do not require substantial cost to the applicant or any person affected by the plan be implemented, the Committee intended only to include such aspects as are within the jurisdiction of the unit or units of local government at the time of the adoption of the plan. Aspects of the plan which would require changes or additions in the jurisdiction of such unit or units are obviously exempted from the requirement.

Finally the subsection permits the Secretary to extend the date by which any action is required to be taken under the subsection.

Subsection (h) directs the Secretary to prescribe procedures which permit and encourage units of local government to consolidate the filing of applications under the section and the preparing of local energy plans for those units which file such applications. In the event that separate applications are received from a unit, or units, of local government which are within the jurisdiction of another unit of local government also filing an application, the Secretary may require, under procedures which he shall prescribe, that the application be consolidated.

The Committee believes that consolidation is a very important aspect of the program initiated under the title. Considering the tens of thousands of diverse units of local government throughout the Nation, the speed with which the program is implemented, and even the ultimate success of the program itself, could well hinge upon the degree to which various units join together in cooperative action. While the aim of the program is to spur the creative genius of American communities to develop new and creative ways of conserving energy and increasing the use of renewable resources, this does not mean that the program should be used as a vehicle for spawning a hodgepodge of inconsistent or contradictory programs.

The Secretary is expected to give priority to consolidated programs unless no consolidation is possible or feasible. If a unit of local government within the jurisdiction of another unit of local government files an application and the superior unit also files an application, the Secretary may under the authority of the subsection refuse to fund either application until they are consolidated, if he determines that such consolidation is desirable to carry out the purposes of the Act. On the other hand, if he determines that the applications are not inconsistent and that both carry out the purposes of the Act, he may approve both. Thus, for example, if a large city is located within a county which also has small towns and rural areas, and the city provides a wide range of municipal services to its residents, the Secretary may well find that separate plans, one for the urban area and one for the suburban-rural area, might better carry out the purposes of the Act than a consolidated plan. It is also conceivable that the Secretary might find that the purposes of the Act are better carried out by allowing three separate applications, one for the City, one for the suburban area, and one for the rural area. He might even find that due to special geographic, demographic or other characteristics the purposes of the Act might better be carried out if one or more of the suburban communities were to join in still a fourth application. The Secretary might also find that local communities in different States share common problems and common interests to such a degree as to justify the filing of a consolidated application. Nothing in this Act should be construed as presenting an impediment to such a consolidation, if consistent with other provisions of Federal, State and local law. In short, the Committee views the consolidation provisions as a tool through the use of which the Secretary working with local communities can fashion the most effective and efficient programs for carrying out the purposes of this Act.

An amendment was offered which would specify that small towns in a community such as Orange County, California (which includes a number of small cities under population 50,000), would be allowed to consolidate and would not in any way be at a disadvantage because of their size or geographic situation. The Committee held that such a specific amendment was not necessary since consolidations like that described in the amendment, were encouraged in the bill as it is, and the amendment was withdrawn accordingly.

Finally the subsection requires that the Secretary shall initially prescribe and make effective regulations required to implement the section not later than 60 days after the date of enactment of the Act.

Section 102. Grants to Assist Implementation of Community Energy Plans

Subsection (a) authorizes the Secretary, in accordance with the section, section 105, and such regulations as the Secretary may prescribe, to commit to make, and to make, a grant to any applicant for the costs of implementing a local energy plan, whether or not prepared pursuant to a grant under section 101, if that plan is approved under subsection (c).

It specifies that funds may be provided for only one 12-month period for the implementation of any local energy plan, except that the Secretary may, on request, extend the period of the funding, but no longer than 36 months.

Subsection (b) specifies that the amount of any grant under the subsection shall not exceed 50 percent of the reasonable cost paid or incurred by the applicant in implementing a local energy plan and requires that the availability of financial assistance under other provisions of Federal law (other than under part II of Title III of the Energy Policy and Conservation Act) shall be taken into account in determining the amount of any grant under the section.

In adopting the provision requiring account to be taken of assistance available to any applicant under other provisions of Federal law, the Committee intended that this should be used to prevent duplication of Federal funding for an application, or part of an application, but not to prevent coordination or combination with or use of other Federal funds, which will add to an applicant's ability to implement plans for increased conservation of energy or use of renewable resources, or both.

The Committee exempted funds authorized under part II of Title III of EPCA because it wanted to encourage local units of government to utilize the assistance provided for energy audits and technical assistance under that program. The Committee notes that the program of assistance offered under part G of Title III of EPCA (Schools and Hospitals) has been remarkably successful in reducing energy consumption in such buildings. DOE reports that in the first cycle alone, which was completed earlier this year, a total of 11,402 buildings received $117,000,000 in Federal assistance for the installation of energy conservation measures or in the form of technical assistance, and the energy savings to those buildings will be the equivalent to 4,560,000 barrels of oil per year every year thereafter. In the second cycle, which is currently under way, an estimated 11,000 buildings will receive a total of $115,000,000 in Federal assistance and the energy savings will be the equivalent of 4,500,000 barrels of oil per year, making the total savings that will result from the first two cycles of this program the equivalent of 9,060,000 barrels of oil every year thereafter.

The Committee has been disappointed at the failure of local governments to avail themselves of this program. The most common explanation for the failure is that since local governments are not able to obtain grants for the installation of energy conservation measures, they feel that the program does not offer them significant assistance. In effect the local governments are saying: We don't need money to tell us what is wrong with our buildings. We know that already. What we need is money to do something about it.

Experience with the Schools and Hospitals program indicates that this is a serious misconception. Experts report that as a result of an energy audit the average reduction of energy consumption is about 15 percent. This results principally from changes in operating and maintenance procedures which the audit reveals to be faulty and involve no substantial expense to correct. Much larger savings can be achieved through technical assistance programs and the Committee notes that 78 percent of the grants under the Schools and Hospitals program have involved only technical assistance.

It may well be that experience will show that the addition of energy conservation measure grants to the assistance under part H of Title III of EPCA is warranted. The Committee will have difficulty in making that judgment if the local governments do not avail themselves of the auditing program available and funded, so as to give the Committee evidence of the need for such action.

Subsection (c) requires that a grant under the section shall only be provided upon the approval by the Secretary of an application containing information required in subsection (d) and authorizes the Secretary to prescribe the periods during which applications may be filed and considered under the section. If further provides that the Secretary may not approve a grant under the section unless he determines that the local energy plan involved meets the requirements set forth in section 101(b) and that reasonable efforts have been made to obtain funding under the provisions of part H of Title III of EPCA.

The purpose of this latter provision is to see that the Committee intention regarding buildings owned by units of local government described in the analysis of subsection (b), above, is carried out.

Finally, the section requires that the applicant shall provide for reasonable notice and opportunity for public comment on any application before it is submitted and shall provide the Governor of the State where the unit of local government involved is located with a copy of the proposed application.

Again, recognizing that the requirement of formal public hearings sometimes results in unnecessary delay and complication, the Committee did not adopt such a requirement. However, it is the express intent of the Committee that the Secretary affirmatively encourage public hearings and that, unless he finds that such hearings would result in unnecessary complication or delay, he give priority to applications which have been the subject of a public hearing or hearings in some reasonable form.

Subsection (d) specifies that applications for a grant under the section for implementation of a local energy plan shall include:

(1) a copy of the local energy plan, together with any related implementation data and information;

(2) a commitment that upon termination of the grant the applicant will continue implementation of the plan and undertake oversight and review of the plan and its implementation, together with such assurances as the Secretary considers appropriate that resources will be available for such purposes;

(3) a statement of the source of funds for covering those costs of implementing the plan which are not covered by any grant under the title;

(4) evidence demonstrating that the actions proposed to be funded under the local energy plan are practicable;

(5) a summary of the comments on the plan received by the applicant under section 101(g)(3)(B), and any modifications in the plan based on such comments, together with a summary of comments received by the applicant on the grant application under the section; and

(6) such other information as the Secretary may require.

The subsection also requires that the applications should be simple and in concise form and require only such information as may be necessary to allow the Secretary to efficiently and effectively consider the application. This latter requirement was adopted by the Committee to protect the interests of small communities and recognized bodies of Indian tribes in the same manner and for the same purposes as the similar requirement adopted in section 101(f).

Subsection (e) authorizes the Secretary, after consideration of any grant application under the section and subject to the availability of funds, to approve a grant under the section if he finds that the requirements of the title regarding such application have been met. It also provides that in determining whether to approve a grant application under the section, the Secretary shall give priority to those applications which, for the funds involved, will produce the greatest energy conservation or use of renewable resources, which will require the least amount of public subsidy after the implementation period for which the grant is made under the section, and which are replicable.

The Committee recognizes that with limited funds available, the Secretary may have some initial difficulty in establishing priority between projects. In keeping with National policy established by Congress, it is the intent of the Committee, that faced with projects of equivalent value, the Secretary shall give priority first to those that result in a reduction in the consumption of oil and, second, to those that result in a reduction in the consumption of gas. Within those categories, he shall give priority to those projects which will result in the greatest reduction in the consumption of imported oil.

In determining which projects will require the least public subsidy after the implementation period, the Secretary is to consider the economic savings that will result from the project. Thus if a project requires a public subsidy of $1,000 per month and the reduction in energy consumption resulting from the program will result in savings of $1,000 per month, the Secretary is to give that project priority over a project that will require a public subsidy of $1,000 but will produce savings of only $900 per month from reduced energy consumption. However, the Committee intends for the Secretary to assess claimed economic savings and loss and does not intend to bind the Secretary to estimated savings projected by particular applicants or life-cycle cost analysis of each application.

Subsection (f) requires that the Secretary shall initially prescribe and make effective the regulations required to implement the section not later than 60 days after the date of enactment of the Act.

Section 103. Authorization

Subsection (a) authorizes an appropriation not to exceed $420,000,000 for the 3 fiscal years beginning after September 30, 1981, of which not to exceed $200,000,000 shall be available for making local energy planning grants under section 101, not to exceed $200,000,000 shall be available for implementing approved local energy plans under section 102, and not to exceed $20,000,000 shall be available for program administration under the title.

The Committee expressed considerable concern over the excessive use of non-Federal contractors in Department of Energy (DOE) projects. Recognizing that many, if not most communities, will have difficulty acquiring the skilled personnel and services necessary to carry out the terms of the title, it did not impose a limitation on contracting, but it expressed its intent that DOE must make every effort to see to it that where an applicant can develop in-house expertise or utilize the services of non-profit organizations to implement and administer planning and implementation projects, it do so. It is also the intent of the Committee that the technical assistance authority in section 105(a) be used generously to assist small communities that may lack the resources to efficiently utilize and supervise outside contractors.

Finally, the section provides that, if so specified in an appropriation Act, any amount appropriated pursuant to the title may remain available without fiscal year limitation and provides that any authority under the title to enter into a contract, commitment, grant agreement, or other agreement obligating the United States to make outlays pursuant to the title may be exercised only to such extent as may be provided in advance in appropriation Acts.

Section 104. Allocations of Grants

Subsection (a) requires the Secretary to allocate amounts authorized under section 103 in any fiscal year for the purpose of making grants under section 101 and 102 as follows:

(1) 80 percent of the amounts made available for any fiscal year is to be allocated among the several States in accordance with a formula he shall prescribe, by rule, taking into account population and climate of each State and such other factors as he may deem appropriate.

(2) 10 percent of such amounts is to be allocated in such manner as he determines, by rule, after taking into account the availability and cost of fuel or other energy consumed by, and within, the jurisdiction of each State and such other factors as he may deem appropriate.

(3) 10 percent of such amounts is to be allocated in hardship cases in accordance with the provisions of section 105(c) to the

extent such grants exceed the percentage limitation prescribed in sections 101(c) and 102(b).

The Committee adopted this allocation formula which was created to provide for the allocation of funds under Title III of EPCA because substantial experience with the Schools and Hospitals program authorized under that part has demonstrated that the provision is fair and effective. In addition, DOE and energy experts at the State and local levels are familiar with it and understand how it operates. Since the allocation formulas have been worked out and have been in operation for some time, there should be little or no delay in implementing regulations.

It was the explicit intention of the Committee that DOE should utilize the same program personnel in implementing this program that are now engaged in carrying out the provisions of Title III of EPCA, although the Committee expects the staff to be expanded to meet the demands of the new program.

Subsection (b) provides that the total amount allocated for any State under subsection (a) in any given year for section 101 or section 102 may not exceed 10 percent of the total amount allocated for all the States in such year under subsection (a) for that section.

Subsection (c) directs the Secretary to prescribe rules limiting the amount of funds committed or granted to an applicant which may be used for administrative expenses.

Subsection (d) provides that funds allocated under the section for projects in any State but not obligated in such fiscal year are to be available for reallocation in the subsequent fiscal year.

Section 105. General Provisions Regarding Grants

Subsection (a) provides that, upon request and subject to the availability of personnel and funds, the Secretary may provide information and technical assistance, including model law and model energy plans, to units of local government for the purpose of aiding such units in applying for grants under the title and in preparing, implementing and modifying local energy plans for grants provided under the title.

The Committee considers this provision to be of the utmost importance. It intends that the Secretary be prepared to assist different types and sizes of units of local government and that he is to give special attention to smaller units (and recognized bodies of Indian tribes) to enable them to compete more effectively with more sophisticated units of local governments in obtaining grants under the section. Initially, technical assistance is not to take the form of abstract Olympian plans drafted in Washington, but is to involve individuals with specialized knowledge and training working in and with selected local communities representing as broad a spectrum of geographic, demographic and climatologic conditions in the United States as funds, personnel and time will allow. The aim of this is to develop a fund of practical data about actual circumstances in the real world of local energy consumption and to develop techniques and programs that can be used to construct models so that this program can be quickly and efficiently made available to other communities through the nation. The Committee intends to exercise vigilant oversight over the development and implementation of this activity.

Subsection (b) provides that a grant or commitment may not be made under section 102 for any unit of local government (or any combination in which that unit is consolidated for purposes of the title) during any fiscal year in which a grant or commitment is made under section 101 for such unit or such combination.

The Committee is aware of the possibility that a situation could arise in which a unit or units of local government could have acceptable plans but should, in the opinion of the Secretary, be included in a consolidation of other units without adequate plans. In that case, the original grant made to the consolidation should be for planning and the unit or units with the plan should not receive a grant in that year for implementation.

Subsection (c) directs the Secretary to prescribe procedures and criteria applicable to the consideration and approval of applications for grants under the title. It requires that such procedures and criteria shall ensure that the applications of all units of local government are given equal consideration without regard to the types of such units and the sizes of the communities involved and consideration is given to the fact that the limited administrative resources of small units of local government and recognized bodies of Indian tribes place such units at disadvantage in preparing for grants.

The intent of this provision was to ensure that all communities have opportunity to compete for grants even if the Secretary has to provide special help under subsection (a) of the section to small communities (and recognized bodies of Indian tribes) that lack the resources of larger and more sophisticated units of local government.

Subsection (d) provides that the Secretary may not approve any application for a grant under the title unless the Secretary has taken reasonable steps to verify cost estimates, including the reasonableness thereof and of other information contained in the application. It also provides that for the purpose of carrying out such verification or other functions under the title the Secretary shall determine that the work to be performed is appropriate to be performed by contract rather than by Federal employees, that such work cannot reasonably be performed by officers and employees of the Department of Energy under the jurisdiction of the Secretary and that the work is needed.

The Committee is aware that this provision could be interpreted so as to impede the implementation of the program under the title. Such a strict interpretation is not what the Committee expects. The emphasis in the subsection is upon the word "reasonable" and the Committee expects the Secretary to develop generalized methods of verification.

Subsection (e) provides that the Secretary may make grants in excess of the limitations contained in sections 101(c) and 102(b) in severe hardship cases and requires the Secretary to prescribe, by rule, criteria for determining applicants which are in a class of severe hardship, taking into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of costs and such other factors as he deems appropriate.

The Committee notes that the implementation of a similar provision in the Schools and Hospitals program of Title III of EPCA has worked successfully and that as of August, 1980, approximately 15 percent of the grants have been adjusted for hardship cases. It intends that the activities under the subsection should be modeled, insofar as practicable, on those under the Schools and Hospitals program.

Subsection (f) requires the Secretary to complete final action on any application for a grant under the title as soon as possible after that application has been filed and not later than 120 days after the application is submitted, except that the Secretary may extend such period to a specified date with respect to any application if the Secretary publishes notice in the *Federal Register* and includes with such notice a statement of the reasons for such extension and if the extension does not extend beyond 24 months after the applications are filed.

Subsection (g) directs the Secretary to require all units of local government receiving grants under the title to keep such records as he may prescribe, including records which fully disclose the amount of and disposition by the recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the respective portions of the cost of the project or undertaking supplied by other sources and such other records as will facilitate an effective audit.

The Committee also adopted a provision that the Secretary shall prescribe only such records as are necessary for any such audit and shall minimize the burden imposed on such recipients to create and retain records. The purpose of this provision was to assure that thoughtless and unnecessary regulations not impose useless burdens upon units of local government and particularly smaller units (including recognized bodies of Indian tribes).

Finally, the subsection provides that the Secretary and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purposes of audit, evaluation, and examination to any books, documents, papers and records of such receipts which, in the opinion of the Secretary or the Comptroller General, may be related or pertinent to such grants.

Subsection (h) provides that nothing in the title shall be construed to authorize funds for research or development purposes.

Section 106. Annual Reports

The section requires the Secretary, within one year after the date of enactment of the title and annually thereafter while funds are available under the title, to submit to the Congress a detailed report of the actions taken under the title in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such report is required to state the allocations made, including the allocations made for units of local government in each State, and is to include information on the types of actions taken, with funds allocated and an estimate of the energy savings achieved.

TITLE II—CONSOLIDATION AND COORDINATION OF CERTAIN STATE ENERGY GRANT PROGRAMS

Section 201. Consolidation and Coordination of Certain State Energy Grant Programs

Subsection (a) provides that, notwithstanding any other provision of law, a State may submit an annual consolidated application requesting financial assistance under Part D of Title III of the Energy Policy and Conservation Act. It also provides that the portion of the consolidated annual application for each program shall be approved by the State official or State agency specifically authorized to implement that program under State law.

Subsection (b) provides that the Secretary and the appropriate State official or State agency, by mutual agreement, may amend the program time period and any other administrative provision associated with financial assistance awarded under Part D of EPCA before the approval of the consolidated application and may agree that the unexpended balance of the funds made available under such program may continue to be available for the purposes for which those funds were appropriated. The purpose of this provision is to enable a State to submit a consolidated application described in subsection (a).

Subsection (c) requires the Secretary to prescribe rules providing, to the maximum extent practicable, uniformity, consolidation, and coordination in the records and accounting procedures required under programs under Part D of EPCA.

Subsection (d) specifies that nothing in the section shall be construed as limiting or restricting the authority of the Secretary to undertake consolidation or the administration of other financial assistance programs under the jurisdiction of the Secretary to the extent consistent with other provisions of the law.

Subsection (e) provides that the Secretary may prescribe rules allowing orderly transition from multiple applications for financial assistance for State energy programs under Part D of EPCA to the consolidation applications described in subsection (a) of the section. It also provides that in the case of agreements for financial assistance entered into under Part D of EPCA, before the date of enactment of this Act, the Secretary may consolidate into one agreement any such agreements and amend the time period covered by such agreements.

Section 202. The Programming of Certain Energy Grants

The section specifies that notwithstanding any other law, the Secretary may approve a State's request in a consolidated annual application under Section 201 to use financial assistance appropriated for the administrative costs of a State's energy program for expenditure for preparation of State emergency conservation plan under section 212 of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8512).

TITLE III—STATE LONG-RANGE ENERGY PLANS

Section 301. Grants for State Long-Range Energy Planning

Subsection (a) authorizes the Secretary, in accordance with the section, and such regulations as the Secretary may prescribe, to commit to make, and to make, a grant to any State for the costs of preparing, modifying, or administering a State long-range energy plan.

Subsection (b) specifies that for the purposes of the section, a State long-range energy plan is a plan approved by the Governor which contains:

> (a) an estimate of the then-current energy supply and demand within the State and a projection of energy supply and demand in the State over the five-year period following the year in which an application is filed under subsection (e);

(b) a description of the types of energy use affected by the plan and a statement of the State objectives for energy conservation and renewable resource use for such types of energy usage during the three-year period following the year in which the plan is filed under subsection (e) and thereafter;

(c) a description of, and cost estimates, for the programs that the State proposes to achieve its objectives in energy conservation and renewable resources; and

(d) a description of the ways in which the State will monitor and assess progress in meeting such objectives.

The subsection also provides that in developing a long-range energy plan, each State shall consider:

(a) programs by natural gas utilities and by electric utilities regulated by the State to promote energy conservation and the use of renewable resources;

(b) State tax measures or other financial incentives to encourage energy conservation and use of renewable resources;

(c) measures designed to conserve energy used for transportation; and

(d) other programs to promote energy conservation and the use of renewable resources.

Finally, each State long-range energy plan shall, in accordance with such regulations as the Secretary may prescribe, provide for coordination among Federal, State, and local, energy use and conservation programs, activities and objectives.

Subsection (c) provides that the amount of any grant under the section for any State shall not exceed 50 percent of the reasonable costs paid or incurred by the State in preparing a long-range energy plan and requires that the availability of financial assistance to a State under other provisions of Federal law shall be taken into account in determining the amount of any grant under the section to that State.

Subsection (d) requires that a grant shall be provided under the section only upon the approval by the Secretary of an application filed by a State containing such information as the Secretary may require and also requires that a State shall provide for reasonable notice and opportunity for public comment on any application before it is submitted under the section.

Subsection (e) provides that no grant may be made under the section unless an application approved by the Governor for a grant under the section for that State is filed with the Secretary during the six-month period beginning on the date on which funds are first appropriated for the title. It also provides that the Secretary may extend the period of filing an application under the subsection.

Subsection (f) directs that after considering an application the Secretary is to approve such application for a grant subject to the availability of funds, if the Secretary finds that the requirements of the regulations issued under the section regarding the application have been met. It also directs the Secretary to approve or disapprove an application within 120 days after the date it is received, and specifies that any grant under the section shall be made on terms and conditions which the Secretary determines are appropriate and which are consistent with the purposes of the Act. It requires that the terms and conditions of any grant for the appropriation or modification of a State long-range energy plan must:

(a) provide that the State long-range energy plan involved will be completed and submitted to the Secretary on the date specified in the grant application which shall not be later than nine months after the date of the grant approval;

(b) require that before submittal to the Secretary the State will make copies of the proposed plan available to the public and provide an opportunity of not less than 90 days duration for all written public comment, make such modifications in the plan as the State considers appropriate on the basis of public comments and require implementation of any aspects of the plan which do not require substantial cost to the State or any person affected by the plan.

Finally, the subsection provides that the State may extend the date by which any action is required to be taken by any State under paragraphs (2) or (3).

Subsection (g) requires the Secretary to review a timely submission of a State long-range energy plan and directs the Secretary to approve or disapprove such a plan or a modification thereof within 120 days after receipt of the plan, if the Secretary determines that the plan or its modification provides for energy conservation, encourages the use of renewable resources through technologies which are commercially available, complies with the requirements of the section and is consistent with the Federal laws and programs. The Subsection also specifies that a State long-range energy plan shall be approved by the Secretary for a period of two years or such other period as the Secretary may determine appropriate for the implementation of the plan.

Finally, in the case of any State, the Secretary may extend the date by which any action is required to be taken under paragraph (1).

Subsection (h) requires the Secretary to initially prescribe and make effective the regulations required to implement the section not later than 60 days after the date of enactmen of the Act.

Section 302. Authorization of Appropriations

Subsection (a) provides that for the purposes of the title, including the administrative and technical assistance costs of the Secretary, there is authorized to be appropriated to the Secretary $100,000,000 for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984.

Subsection (b) provides that not more than 50 percent of the funds appropriated pursuant to subsection (a) for any fiscal year and expended for work performed for the Secretary may be expended for work performed by contract. It also provides that, if so specified in an appropriation Act, any amount appropriated pursuant to the title may remain available without fiscal year limitation. Finally, it provides that any authority under the title to enter into a contract, commitment, grant agreement, or other agreement obligating the United States to make outlays pursuant to the title may be exercised only to such extent as may be provided in advance in appropriation Acts.

Section 303. Allocation of Grants

Subsection (a) requires the Secretary to allocate the funds available for financial assistance under the title among the States in any fiscal year in the following manner:

(1) 75 percent is to be allocated on the basis of the resident population of the States; and

(2) 25 percent is to be allocated equally among the States.

Subsection (b) specifies that funds allocated under the title to any State for a fiscal year but not obligated by the Secretary in that fiscal year may, at the option of the Secretary, be allocated among the States for the following fiscal year.

Section 304. General Provisions Regarding Grants

Subsection (a) authorizes the Secretary, upon request and subject to the availability of personnel and funds, to provide information and technical assistance, including model laws and model State energy plans, to States for the purpose of aiding such States in applying for grants under the title and in preparing, modifying, administering and implementing State energy plans for which grants are provided under the title.

Subsection (b) directs the Secretary to require all States receiving grants under the title to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by the recipient of the proceeds of any assistance, the total cost of the project or undertaking in connection with which the assistance was given or used, the respective portions of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The section also requires that the Secretary and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purposes of audit, evaluation, and examination, to any books, documents, papers, and records of such receipts, which in the opinion of the Secretary or the Comptroller General may be related to or pertinent to such grant.

Subsection (c) specifies that nothing in the title shall be construed to authorize funds for research or development purposes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill as reported makes no changes in existing law.

MINORITY VIEWS ON S. 1280—COMMUNITY AND STATE ENERGY PLANNING ASSISTANCE ACT (EMPA)

Over the last several years, the Congress has enacted a virtual grab bag of energy conservaion planning and grant programs for State and local governments. Predictably, the administration of many of these programs by the Department of Energy has frustrated the efforts of the States and localities to reach into the grab bag and participate. It seems that even when handling a program it supports, such as improved energy efficiency in schools and hospitals, the DOE manages to drown worthy applicants in confusing forms and regulations. Even when a State has successfully maneuvered itself through the red tape, it must stand by while the DOE sits on its hands.

The original promise of S. 1280 was the streamlining of the administration of programs already established. In many ways, the Committee has stuck to this course, avoiding the inclination to add on specific new requirements to the receipt of Federal grants. For example, according to the official draft of the bill sent to the Committee by the DOE, each State would have been required to adopt a whole litany of DOE pet projects—some of which were highly questionable—before being qualified by DOE to receive funds under the Act. The Committee wisely rejected that approach.

Prudence and moderation have not entirely guided the Committee's drafting, unfortunately. The real promise of the bill—severing the authority of DOE to attach strings to these programs—has not been fully realized. S. 1280 could and should have adopted more of a revenue sharing approach. The Committee should have let the States decide which energy conservation programs work best. Instead, S. 1280 grants to the DOE broad discretion to set "terms and conditions" upon the use of funds by state and local recipients, thereby setting the stage for redtape.

S. 1280 also veered off course in another significant way: it authorizes a huge new grab bag of money—$720 million over three fiscal years—for more "energy planning" by the States and localities. What is most distressing is that energy planning rarely results in either the production or conservation of energy. In fact, the surest result of these new planning and grant programs will be the enrichment of the contracting firms which will prey upon State and local officials in their efforts to obtain federal funds. If the emphasis on "planning" were replaced with a revenue-sharing concept, the governments themselves would have an opportunity to put the funds to a productive use.

The bill could serve a useful purpose. It should be revised by the House to do so. The broad discretion of the DOE to dictate to the States and localities should be eliminated, the expenditure of funds for "planning" should be curtailed, and the overall authorization should be cut in recognition of the fact that the Federal government has already run up a record deficit.

The Minority recognizes that the tendency to load up a bill such as this is difficult for many to resist. Discipline in this instance, however, is essential if the Congress is to create a solution to the present problem. If S. 1280 is enacted as is, the result may well be more of the same. And the States and cities, instead of receiving deliverance from red tape will again be mired in frustration. When this occurs, Congress will have only itself to blame.

The Federal dominance over State and local governments through grant programs is not limited to DOE energy conservation programs. It is one of the most pressing and, sadly, unanswered problems of modern society.

A recent report of the Congressionally-created Advisory Commission on Intergovernmental Relations details some disturbing evidence that the extent—and harm—of the Federal takeover is far greater than many Members realize. For example, the Commission has found that Federal regulations imposed upon State and local governments have grown from an insignificant amount in 1960 to an overwhelming amount today. By this indirect manner Washington has taken control of local governments away from local officials. The Commission concludes that in administering these programs the Federal government "has left no government jurisdiction, and very few citizens, untouched."

The Commission sharply criticizes the usual response of Congress to complaints from State capitals and city halls—cosmetic modifications in Federal-State-local relations. The Commission recommends that bolder action is a requirement.

The Minority fully agrees and believes that the overhaul of the DOE energy conservation programs would be an excellent start. After all, the chief problem the States and localities identified to the Committee in these DOE programs has been the DOE itself. S. 1280 does not, but shoud, squarely deal with the burgeoning power of the DOE. Otherwise, the bill will be no more than another indication of the inability of the Congress to face up to its own responsibility to restrain the Federal government.

James T. Broyhill.
Clarence J. Brown.
James M. Collins.
Norman F. Lent.
Edward Madigan.
Carlos J. Moorhead.
Matt Rinaldo.
Dave Stockman.
Marc L. Marks.
Tom Corcoran.
Tom Loeffler.
William E. Dannemeyer.
Gary A. Lee.
Tim Lee Carter.
Sam Devine.

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96TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
No. 96-1287

FARM CREDIT ACT AMENDMENTS OF 1980

REPORT

together with

SUPPLEMENTAL AND ADDITIONAL VIEWS

AND

Including Congressional Budget Office Cost Estimate

ON

H.R. 7548

A BILL TO AMEND THE FARM CREDIT ACT OF 1971 TO PERMIT FARM CREDIT SYSTEM INSTITUTIONS TO IMPROVE THEIR SERVICES TO BORROWERS, AND FOR OTHER PURPOSES

SEPTEMBER 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

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ROBERT M. BOR, *Chief Counsel*
JOHN E. HOGAN, *Counsel*
JOHN R. KRAMER, *Special Counsel*

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1287

FARM CREDIT ACT AMENDMENTS OF 1980

SEPTEMBER 4, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FOLEY, from the Committee on Agriculture,
submitted the following

REPORT

together with

SUPPLEMENTAL AND ADDITIONAL VIEWS

[To accompany H.R. 7548]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 7548), to amend the Farm Credit Act of 1971 to permit Farm Credit System institutions to improve their services to borrowers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Farm Credit Act Amendments of 1980".

TITLE I—FEDERAL LAND BANKS AND ASSOCIATIONS

SEC. 101. Section 1.4 of the Farm Credit Act of 1971 is amended by—

(1) striking out in paragraph (6) "loans and" and inserting in lieu thereof "and participate in loans, make";

(2) inserting before the period at the end of paragraph (12) ", participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act, and participate with lenders which are not Farm Credit System institutions in loans that the bank is authorized to make under this title";

(3) inserting after "System" in the first sentence of paragraph (14) "or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act";

(4) striking out everything after the second comma in paragraph (15) and inserting in lieu thereof "and, as may be authorized by its board of directors and approved by the Farm Credit Administration, (i) sell to lenders which are not Farm Credit System institutions interests in loans, (ii) buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock, and (iii) make other investments."; and

(5) adding new paragraphs (22) and (23) as follows:

"(22) Accept contributions to its capital from Federal land bank associations and account therefor as authorized by the Farm Credit Administration.

"(23) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan and other losses, whether to protect against capital impairment or for any other purpose.".

SEC. 102. Section 1.5 of the Farm Credit Act of 1971 is amended by—

(1) striking out in subsection (b) "hypotheticated" and inserting in lieu thereof "hypothecated";

(2) striking out the first sentence of subsection (d) and inserting in lieu thereof two new sentences as follows: "Nonvoting stock may be issued to the Governor of the Farm Credit Administration, to borrowers as patronage refunds, and may also be issued to Federal land bank associations in amounts that will permit the bank to extend financial assistance to eligible persons other than farmers, ranchers, and producers or harvesters of aquatic products. Nonvoting stock also may be issued to and shall be retired for other Farm Credit System institutions as may be authorized by its board of directors and approved by the Farm Credit Administration."; and

(3) adding new subsections (f) and (g) as follows:

"(f) Patronage refunds may be paid in nonvoting stock, participation certificates, allocated surplus, and other equities of the bank, or cash, or in both equities and cash, as determined by the board of the bank, to borrowers of the fiscal year for which such patronage refunds are distributed. All patronage refunds shall be paid in the proportion that the amount of interest on the loans to each borrower during the year bears to the interest on the loans of all borrowers during the year or on such other proportionate patronage basis as the Farm Credit Administration may approve.

"(g) Equities to evidence contributions to capital may be issued to Federal land bank associations when the bylaws of the bank so provide.".

SEC. 103. Section 1.6 of the Farm Credit Act of 1971 is amended to read as follows:

"SEC. 1.6. REAL ESTATE MORTGAGE LOANS.—The Federal land banks are authorized to make or participate with other lenders in long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, or to producers or harvesters of aquatic products, and make continuing commitments to make such loans under specified circumstances, or extend other financial assistance of a similar nature to eligible borrowers, for a term of not less than five nor more than forty years.".

SEC. 104. Section 1.7 of the Farm Credit Act of 1971 is amended by inserting before the period in the first sentence "as provided in section 4.17 of this Act".

SEC. 105. Section 1.8 of the Farm Credit Act of 1971 is amended by striking out in clause (1) "and ranchers" and inserting in lieu thereof ", ranchers, or producers or harvesters of aquatic products".

SEC. 106. Section 1.9 of the Farm Credit Act of 1971 is amended by striking out the first sentence and inserting in lieu thereof the following: "Loans originated by a Federal land bank or in which it participates with a lender which is not a Farm Credit System institution shall not exceed 85 per centum of the appraised value of the real estate security, or such greater amount, not to exceed 97 per centum of the appraised value of the real estate security, as may be authorized under regulations of the Farm Credit Administration for loans guaranteed by Federal, State, or other governmental agencies, and shall be secured by first liens on interest in real estate of such classes as may be approved by the Farm Credit Administration.".

SEC. 107. Section 1.10 of the Farm Credit Act of 1971 is amended by striking out the first sentence and inserting in lieu thereof the following: "Loans made by the Federal land banks to farmers, ranchers, and producers or harvesters of aquatic products may be for any agricultural or aquatic purpose and other credit needs of the applicant, including financing for basic processing and marketing directly related to the applicant's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products: *Provided*, That the applicant's operations shall supply at least 20 per centum, or such larger per centum that is required by the board of directors of the bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended.".

Sec. 108. Section 1.11 of the Farm Credit Act of 1971 is amended by inserting "and aquatic" before "operations".

Sec. 109. Section 1.12 of the Farm Credit Act of 1971 is amended by striking out the designation "(a)".

Sec. 110. Section 1.15 of the Farm Credit Act of 1971 is amended by—

(1) striking out in paragraph (13) "shall";

(2) striking out in paragraph (14) "may" the second time it appears; and

(3) adding a new paragraph (21) as follows:

"(21) Contribute to the capital of the bank.".

Sec. 111. Section 1.16 of the Farm Credit Act of 1971 is amended by—

(1) striking out in the sixth sentence of subsection (a) "fair"; and

(2) adding a new subsection (c) as follows:

"(c) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan (1) made by a Federal land bank which it sells to a lender which is not a Farm Credit System institution, or (2) that such lender retains or acquires in participating in the loan with a Federal land bank.".

Sec. 112. Section 1.17 of the Farm Credit Act of 1971 is amended by—

(1) striking out in the last sentence of subsection (a) "exess" and inserting in lieu thereof "excess"; and

(2) amending subsection (b) by inserting ", and pay patronage refunds, or do any of them, as provided in its bylaws," after "dividends", and striking out "with" and inserting in lieu thereof "the".

Sec. 113. Section 1.18(b) of the Farm Credit Act of 1971 is amended to read as follows:

"(b) Any association may declare a dividend or dividends and pay patronage refunds, or do any of them, as provided in its bylaws, out of the whole or any part of its net earnings available therefor which remain after (1) maintenance of the reserve required in subsection (a) of this section and (2) bank approval. All patronage refunds shall be paid on the proportionate patronage basis approved by the bank. Dividends shall be noncumulative, and the rate of dividends may be different between classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the Federal land bank by such classes and issues, but otherwise dividends shall be without preference.".

Sec. 114. Section 1.19 of the Farm Credit Act of 1971 is amended by adding at the end thereof a new sentence as follows: "As may be authorized by the bank in accordance with regulations of the Farm Credit Administration, associations also may enter into agreements with other Farm Credit System institutions to share loans and other losses, whether to protect against capital impairment or for any other purpose.".

Sec. 115. Section 1.20 of the Farm Credit Act of 1971 is amended by inserting after "stock" the second time it appears "or participation certificates," and inserting "or other Farm Credit System institutions" after "Administration".

TITLE II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS

Sec. 201. Section 2.1 of the Farm Credit Act of 1971 is amended by—

(1) inserting after "System" in the first sentence of paragraph (12) "or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act";

(2) striking out in paragraph (13) everything after "agency" the second time it appears and inserting in lieu thereof ", and, as may be authorized by its board of directors and approved by the Farm Credit Administration, (i) buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock, and (ii) make other investments.";

(3) amending paragraph (18) to read as follows:

"(18) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purposes,"; and

(4) inserting before the period at the end of paragraph (20) ", and participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act.".

SEC. 202. Section 2.2 of the Farm Credit Act of 1971 is amended by—

(1) inserting before the period at the end of the first sentence of subsection (d) ", and may be issued to and, notwithstanding the provisions of subsection (g) of this section, shall be retired for other Farm Credit System institutions as may be authorized by its board of directors and approved by the Farm Credit Administration";

(2) striking out in the second and fourth paragraphs of subsection (g) "fair";

(3) striking out everything through "Governor" in subsection (h) and inserting in lieu thereof "Except with regard to stock or participation certificates held by the Governor or other Farm Credit System institutions"; and

(4) striking out in subsection (i) "fair".

SEC. 203. Section 2.3 of the Farm Credit Act of 1971 is amended to read as follows:

"SEC. 2.3 LOANS; DISCOUNTS; PARTICIPATION; LEASING.—(a) The Federal intermediate credit banks are authorized to make loans and extend other similar financial assistance to, and to discount for or purchase from—

(1) any production credit association, or

(2) any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products,

any note, draft, or other obligation with its endorsement or guarantee, the proceeds of which note, draft, or other obligation have been advanced to persons and for purposes eligible for financing by production credit associations under section 2.15(a) (1), (2), and (3) of this Act.

"(b) The Federal intermediate credit banks may participate with one or more production credit associations or intermediate credit banks in the making of loans to eligible borrowers and may participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act. The banks may own and lease or lease with option to purchase to persons eligible for assistance under this subchapter, equipment needed in the operations of such persons.

"(c) No paper shall be purchased from or discounted for, and no loans shall be made or other similar financial assistance extended by a Federal intermediate credit bank to any entity identified in subsection (a)(1) and (2) of this section if the amount of such paper added to the aggregate liabilities of such entity, whether direct or contingent (other than bona fide deposit liabilities), exceeds ten times the paid-in and unimpaired capital and surplus of such entity or (in the case of financing institutions under subsection (a)(2) of this section) the amount of such liabilities permitted under the laws of the jurisdiction creating such institution, whichever is the lesser. It shall be unlawful for any national bank which is indebted to any Federal intermediate credit bank, upon paper discounted or purchased under subsection (a) of this section, to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitation herein contained.

"(d) All of the loans, financial assistance, discounts, and purchases authorized by this section shall be subject to regulations of the Farm Credit Administration and shall be secured by collateral, if any, as may be required in such regulations. The regulations shall assure that such loans, financial assistance, discounts, and purchases are available on a reasonable basis to any financing institution authorized to receive such services under subsection (a)(2) of this section that (i) is significantly involved in lending for agricultural or aquatic purposes, (ii) demonstrates a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers, (iii) has limited access to national or regional capital markets, and (iv) does not use such services to expand its financing activities to persons and for purposes other than those authorized in section 2.15(a) (1), (2), and (3) of this Act. The regulations may authorize a Federal intermediate credit bank to charge reasonable fees for any commitment to extend service under this section to such a financing institution. For purposes of this subsection, a financing institution together with its subsidiaries and affiliates may be considered as one but such determination to consider such institution together with its subsidiaries and affiliates as one shall be made in the first instance by the bank and in the event of a denial by the bank of its services to a financial institution, thereafter by the Farm Credit Administration on a case-by-case basis with due regard to the total relationship of the financing institution, its subsidiaries, and affiliates.

"(e) Nothing in this section shall require termination of discount relationships in existence on the effective date of the Farm Credit Act Amendments of 1980.".

SEC. 204. Section 2.4 of the Farm Credit Act of 1971 is amended by striking out the first sentence and inserting in lieu thereof the following: "Loans, advances, or discounts made under section 2.3 of this Act shall be repayable in not more than seven years (fifteen years if made to producers or harvesters of aquatic products) from the time they are made or discounted by the Federal intermediate credit bank, except that the district farm credit board, under regulations of the Farm Credit Administration, may approve policies permitting loans, advances, or discounts (other than those made to producers or harvesters of aquatic products) to be repayable in not more than ten years from the time they are made or discounted by such bank. Loans, advances, and discounts shall bear such rate or rates of interest or discount as the board of directors of the bank shall from time to time determine with the approval of the Farm Credit Administration as provided in section 4.17 of this Act, but the rates charged financing institutions shall be the same as those charged production credit associations.".

SEC. 205. Section 2.5 of the Farm Credit Act of 1971 is amended by inserting "and aquatic" after "on-farm".

SEC. 206. Section 2.6(c) of the Farm Credit Act of 1971 is amended by striking out "of less than 25 per centum" in the second sentence.

SEC. 207. Section 2.10 of the Farm Credit Act of 1971 is amended by striking out the comma after "States" in the first sentence and inserting in lieu thereof a period.

SEC. 208. Section 2.12 of the Farm Credit Act of 1971 is amended by—

(1) inserting before the period at the end of paragraph (11) "and buy from and sell to such banks interests in loans and in other financial assistance extended and nonvoting stock, as may be authorized by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration";

(2) inserting before the period at the end of paragraph (13) "and when authorized by the bank participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act"; and

(3) amending paragraph (15) to read as follows:

"(15) As may be authorized by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose.".

SEC. 209. Section 2.13 of the Farm Credit Act of 1971 is amended by—

(1) inserting before the period at the end of subsection (e) "or in lieu of nonvoting stock";

(2) striking out in the first sentence of subsection (f) "fair";

(3) amending the last sentence of subsection (f) to read as follows: "Notwithstanding any other provisions of this section, for a loan in which an association participates with a commercial bank or other financial institution other than a Farm Credit System institution, nonvoting stock or participation certificates may be issued to the commercial bank or other financial institution in satisfaction of the requirement that the borrower own stock or participation certificates, which requirement shall apply only to the portion of the loan which is retained by the association.";

(4) striking out in the first sentence in subsection (g) "fair";

(5) striking out everything through "Governor" in subsection (j) and inserting in lieu thereof "Except with regard to stock or participation certificates held by the Governor or other Farm Credit System institutions"; and

(6) striking out in subsection (k) "fair".

SEC. 210. Section 2.15 of the Farm Credit Act of 1971 is amended by—

(1) amending clause (1) in the first sentence of subsection (a) to read as follows: "(1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural or aquatic purposes and other requirements of such borrowers, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products: *Provided*, That the borrower's operations shall supply at least 20 per centum, or such larger per centum that is required by the supervising bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended,"; and

(2) inserting in subsection (b) after "Administration" in the first sentence "as provided in section 4.17 of this Act".

SEC. 211. Section 2.16 of the Farm Credit Act of 1971 is amended by inserting "and aquatic" after "on-farm".

TITLE III—BANKS FOR COOPERATIVES

SEC. 301. Section 3.1 of the Farm Credit Act of 1971 is amended by—

(1) inserting before the period at the end of paragraph (11) ", and participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act";

(2) inserting after "System" in the first sentence in paragraph (12) "or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act or, to the extent necessary to facilitate transactions which may be financed under section 3.7(b) of this Act, any other financial organization, domestic or foreign, as may be authorized by its board of directors and approved by the Farm Credit Administration";

(3) amending paragraph (13) by:

(a) inserting immediately after "(13)" the designation "(A)";

(b) inserting after subparagraph (A) the following new subparagraphs (B) and (C):

"(B) As may be authorized by its board of directors and approved by the Farm Credit Administration, buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock.

"(C) As may be authorized by its board of directors and approved by the Farm Credit Administration, and solely for the purposes of obtaining credit information and other services needed to facilitate transactions which may be financed under section 3.7(b) of this Act, invest in ownership interests in foreign business entities that are principally engaged in providing credit information to and performing such servicing functions for their members in connection with the members' international activities."; and

(4) adding new paragraphs (18) and (19) as follows:

"(18) As may be authorized by the board of directors and approved by the Farm Credit Administration, maintain credit balances and pay or receive fees or interest thereon, for the purpose of assisting in the transfer of funds to or from parties to transactions that may be financed under section 3.7(b) of this Act: *Provided, however*, That nothing herein shall authorize the banks for cooperatives to engage in the business of accepting domestic deposits.

"(19) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose.".

SEC. 302. Section 3.3 of the Farm Credit Act of 1971 is amended by adding a new subsection (f) as follows:

"(f) Participation certificates may be issued to parties to whom voting stock may not be issued.".

SEC. 303. Section 3.5 of the Farm Credit Act of 1971 is amended by—

(1) striking out the first three sentences and inserting in lieu thereof three new sentences as follows: "Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 4.0(b) of this Act before any other outstanding voting or nonvoting stock or participation certificates shall be retired except as may be otherwise authorized by the Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock and participation certificates may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock or participation certificates retired in response to a call, reserving the right to have such stock or participation certificates included in the next call for retirement."; and

(2) striking out in the fourth sentence "fair book value not exceeding".

SEC. 304. Section 3.7 of the Farm Credit Act of 1971 is amended by—

(1) adding the designation "(a)" before the text, and inserting before "collateral custody" in the first sentence, "currency exchange necessary to service individual transactions that may be financed under subsection (b) of this section,", and inserting before the period at the end of the third sentence "and may make or participate in loans or commitments and extend other technical and financial assistance to other domestic parties for the acquisition of equipment and facilities to be leased to such stockholders for use in their operations in the United States"; and

(2) adding new subsections (b), (c), (d), and (e) as follows:

"(b) A bank for cooperatives is authorized to make or participate in loans and commitments to, and to extend other technical and financial assistance to (1) a domestic or foreign party with respect to its transactions with an association that is a voting stockholder of the bank for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, and (2) a domestic or foreign party in which such an association has at least the minimum ownership interest approved under regulations of the Farm Credit Administration for the purpose of facilitating the association's export or import operations of the type described in clause (1) of this subsection: *Provided*, That a bank for cooperatives determines, under regulations of the Farm Credit Administration, that the voting stockholder will benefit substantially as a result of such loan, commitment, or assistance.

"(c) Loans, commitments, and assistance authorized by subsection (b) of this section shall be extended in accordance with policies adopted by the board of directors of the bank under regulations of the Farm Credit Administration.

"(d) The regulations of the Farm Credit Administration implementing subsection (b) of this section and the other provisions of this title relating to the authority under subsection (b) of this section may not confer upon the banks for cooperatives powers and authorities greater than those specified in this title. The Farm Credit Administration shall, during the formulation of such regulations, closely consult on a continuing basis with the Board of Governors of the Federal Reserve System to ensure that such regulations conform to national banking policies, objectives, and limitations.

"(e) Notwithstanding any other provision of this title, the banks for cooperatives shall not make or participate in loans or commitments for the purpose of financing speculative futures transactions by eligible borrowers in foreign currencies.".

SEC. 305. Section 3.8 of the Farm Credit Act of 1971 is amended by—

(1) in the first paragraph striking out the second comma and inserting "or aquatic" before "business";

(2) striking out in subsection (c) "or farm business services" and inserting in lieu thereof "farm or aquatic business services, or services to eligible cooperatives"; and

(3) amending subsection (d) to read as follows:

"(d) A percentage of the voting control of the association not less than 80 per centum (60 per centum (1) in the case of rural electric, telephone, public utility, and service cooperatives; (2) in the case of local farm supply cooperatives that have historically served needs of the community that would not adequately be served by other suppliers and have experienced a reduction in the percentage of farmer membership due to changed circumstances beyond their control such as, but not limited to, urbanization of the community; and (3) in the case of local farm supply cooperatives that provide or will provide needed services to a community and that are or will be in competition with a cooperative specified in paragraph (2)) or, with respect to any type of association or cooperative, such higher percentage as established by the district board, is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;".

SEC. 306. Section 3.9(a) of the Farm Credit Act of 1971 is amended by striking out the first sentence and inserting in lieu thereof a new sentence as follows: "Each borrower entitled to hold voting stock shall, at the time a loan is made by a bank for cooperatives, own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan.".

SEC. 307. Section 3.10 of the Farm Credit Act of 1971 is amended by—

(1) inserting before the period in the first sentence of subsection (a) "as provided in section 4.17 of this Act"; and

(2) striking out in the first sentence of subsection (d) "book" and inserting in lieu thereof "market" and adding a new sentence as follows: "In no event shall the bank's equities be retired or canceled if the retirement or cancellation would adversely affect the bank's capital structure, as determined by the Farm Credit Administration.".

SEC. 308. Section 3.11 of the Farm Credit Act of 1971 is amended by—

(1) striking out in the second sentence of subsection (b) "of less than 25 per centum" and "of not to exceed such per centum of net savings"; and

(2) striking out the first sentence of subsection (c) and inserting in lieu thereof a new sentence as follows: "The net savings of each district bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsection (a) or (b) of this section, whichever is applicable, shall be paid in stock, participation certificates, or cash, or in any of them, as determined by its board, as patronage refunds to borrowers to whom such refunds are payable who are borrowers of the fiscal year for which such patronage refunds are distributed.".

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

SEC. 401. Section 4.5 of the Farm Credit Act of 1971 is amended by—

(1) striking out in the first sentence "presidents of each bank" and inserting in lieu thereof "president of each bank or the president's designee"; and

(2) striking out in the third sentence "subcommittee's" and inserting in lieu thereof "subcommittees."

SEC. 402. Section 4.10 of the Farm Credit Act of 1971 is amended by striking out "name" and inserting in lieu thereof "same".

SEC. 403. Title IV of the Farm Credit Act of 1971 is amended by adding new sections 4.17, 4.18, and 4.19 as follows:

"SEC. 4.17 INTEREST RATES.—Interest rates on loans from institutions of the Farm Credit System shall be determined with the approval of the Farm Credit Administration as provided in this Act, notwithstanding any interest rate limitation imposed by any State constitution or statute or other law(s) which are hereby preempted for purposes of this Act. Interest rates on loans made by agricultural credit corporations organized in conjunction with cooperative associations for the purpose of financing the ordinary crop operations of the members of such associations or other producers and eligible to discount with the Federal intermediate credit banks pursuant to section 2.3 of this Act, shall be exempt from any interest rate limitation imposed by any State constitution or statute or other law(s) which are hereby preempted for purposes of this Act.

"SEC. 4.18. PARTICIPATION LOANS.—Notwithstanding any other provisions of this Act, the terms of any loan participated in by two or more Farm Credit System institutions operating under different titles of this Act, including provision for capitalization of the portion of the loan participated in by each institution, shall be as may be agreed upon among such institutions and authorized by the Farm Credit Administration, except that for purposes of determining borrower eligibility, membership, term, amount, loan security, and purchase of stock or participation certificates by the borrower, the provisions of law applicable to the loan shall be the provisions in the title under which the institution that originates the loan operates.

"SEC. 4.19. YOUNG, BEGINNING, AND SMALL FARMERS AND RANCHERS.—

"(a) Under policies of the district board, each Federal land bank association and production credit association shall prepare a program for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers. Such programs shall assure that such credit and services are available in coordination with other units of the Farm Credit System serving the territory and with other governmental and private sources of credit. Each program shall be subject to review and approval by the supervising bank.

"(b) The Federal land bank and the Federal intermediate credit bank for each district shall annually obtain from associations under their supervision reports of activities under programs developed pursuant to subsection (a) of this section and progress toward program objectives. On the basis of such reports, the banks shall provide to the Farm Credit Administration a joint annual report summarizing the operations and achievements in their district under such programs.".

SEC. 404. Title IV of the Farm Credit Act of 1971 is amended by adding at the end thereof new parts D and E as follows:

"PART D—SERVICE ORGANIZATIONS

"SEC. 4.25. ESTABLISHMENT.—Any bank of the Farm Credit System, or two or more of such banks acting together, may organize a corporation or corporations for the purpose of performing functions and services for or on behalf of the organizing bank or banks that the bank or banks may perform pursuant to this Act: *Provided*, That a corporation so organized shall have no authority either to extend credit or provide insurance services for borrowers from Farm Credit System institutions, nor shall it have any greater authority with respect to functions and services than the organizing bank or banks possess under this Act. The organizing bank or banks shall apply for a Federal charter for the corporation by forwarding to the Governor of the Farm Credit Administration a statement of the need for the corporation and proposed articles specifying in general terms the objectives for which the corportion is formed, the powers to be exercised by it in carrying out the functions and services, and the territory it is to serve. The Governor for good cause may deny the charter applied for. Upon the approval of articles by the Governor and the issuance of a charter, the corportion shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

"SEC. 4.26. POWERS OF THE GOVERNOR.—The Governor shall have power, under rules and regulations prescribed by the Governor or by prescribing in the terms of the charter or by approval of the bylaws of the corporation, to provide for the organization of any corporation chartered under this part and the territory within which its operations may be carried on, and to direct at any time such changes in its charter as he finds necessary for the accomplishment of the purposes of this Act. The powers of the Governor to provide for the organization of any corporation chartered under this part include, but are not limited to approval of—

"(1) corporate title;

"(2) general corporate powers;

"(3) eligibility for membership on, and the powers, composition, selection, terms, and compensation of the board of directors;

"(4) classes, issuance, value, and retirement of stock;

"(5) sources of operating funds;

"(6) dissolution, liquidation, and distribution of assets on liquidation; and

"(7) application and distribution of earnings.

"SEC. 4.27. SUPERVISION AND EXAMINATIION.—The corporations organized under this part shall be institutions of the Farm Credit System and shall be subject to the same supervision and examination by the Farm Credit Administration as are the organizing bank or banks under this Act.

"SEC. 4.28. STATE LAWS.—State and other laws shall apply to corporations organized pursuant to this part to the same extent such laws would apply to the organizing bank(s) engaged in the same activity in the same jurisdiction: *Pro-*

vided, however, That to the extent that sections 1.21, 2.8, and 3.13 of this Act may exempt banks of the Farm Credit System from taxation, such exemptions, other than with respect to franchise taxes, shall not extend to corporations organized pursuant to this part.

"PART E—SALE OF INSURANCE

"SEC. 4.29. LINES OF INSURANCE.—(a) The regulations of the Farm Credit Administration governing financially related services that the banks and associations of the Farm Credit System may provide under sections 1.11, 1.15, 2.5, and 2.16 of this Act may authorize the sale to any member of any such bank or association, on an optional basis, of credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtors and other insurance necessary to protect the member's farm or aquatic unit, but limited to, hail and multiple-peril crop insurance, title insurance, and insurance to protect the facilities and equipment of aquatic borrowers.

"(b) Such regulations shall provide that—

"(1) in any case in which insurance is required as a condition for a loan or other financial assistance from a bank or association, notice be given that it is not necessary to purchase the insurance from the bank or association and that the borrower has the option of obtaining the insurance elsewhere;

"(2) such insurance services may be offered only if—

"(i) the bank or association has the capacity to render insurance service under this Act in an effective and efficient manner;

"(ii) there exists the probability that any insurance program under this Act will generate sufficient revenue to cover all costs; and

"(iii) rendering insurance service will not have an adverse effect on the bank's or association's credit or other operations; and

"(3) no bank or association shall directly or indirectly discriminate in any manner against any agent, broker, or insurer that is not affiliated with such bank or association, or against any party who purchases insurance through any such nonaffiliated insurance agent, broker, or insurer.

"(c) Notwithstanding any provision of this section to the contrary, any bank or association that on the date of enactment of the Farm Credit Act Amendments of 1980, is offering insurance coverages not authorized by this section may continue to sell such coverages for a period of not more than one year from such date of enactment and may continue to service such coverages until their expiration.".

TITLE V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

SEC. 501. Section 5.0 of the Farm Credit Act of 1971 is amended by inserting before the period at the end of the first sentence the following: "and one of which districts may, if authorized by the Federal Farm Credit Board, include the Virgin Islands of the United States: *Provided,* That the extension of credit and other services authorized by this Act in the Virgin Islands of the United States shall be undertaken only if determined to be feasible under regulations of the Farm Credit Administration".

SEC. 502. Section 5.2 of the Farm Credit Act of 1971 is amended by—

(1) striking out in the last sentence of subsection (b) "three" and inserting in lieu thereof "two"; and

(2) striking out in the first sentence of subsection (c) "three" and inserting in lieu thereof "two".

SEC. 503. Section 5.8(h) of the Farm Credit Act of 1971 is amended by striking out in the first sentence "the sum of $100 a day" and inserting in lieu thereof "compensation at a rate equal to the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 of the United States Code".

SEC. 504. Section 5.15 of the Farm Credit Act of 1971 is amended by adding at the end thereof a new sentence as follows: "The Farm Credit Administration may dispose of property so acquired and any amounts collected from the disposition of such property shall be deposited in the special fund provided for in section 5.16(b) of this Act and shall be available to the Administration in the same manner and for the same purposes as the funds collected under section 5.16(a) of this Act."

SEC. 505. Section 5.17 of the Farm Credit Act of 1971 is amended by adding at the end thereof the following new clause (5) and inserting a new sentence immediately thereafter:

"(5) To sell or otherwise dispose of any interest in property leased or acquired under the foregoing if authorized by the Board.

In actions undertaken by the banks pursuant to the foregoing provisions of this section, the Farm Credit Administration may act as agent for the banks.".

SEC. 506. Section 5.18 of the Farm Credit Act of 1971 is amended by adding at the end of paragraph (3) a new sentence as follows: "The annual reports shall include a summary and analysis of the reports submitted to the Farm Credit Administration by the Federal land banks and Federal intermediate credit banks under section 4.19(b) of this Act relating to programs for serving young, beginning, and small farmers and ranchers.".

SEC. 507. Section 5.18 of the Farm Credit Act of 1971 is amended by inserting "(a)" immediately after the section designation and adding at the end thereof the following new subsections (b) and (c):

"(b)(1) At least thirty days prior to publishing any proposed regulation in the Federal Register, the Farm Credit Administration shall transmit a copy of the regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Farm Credit Administration shall also transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in paragraph (2) of this subsection, no final regulation of the Farm Credit Administration shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of the Congress are in session.

"(2) In the case of an emergency, a final regulation of the Farm Credit Administration may become effective without regard to the last sentence of paragraph (1) of this subsection if the Farm Credit Administration notifies in writing the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

"(c)(1) If there are any unresolved differences between the Farm Credit Administration and the Board of Governors of the Federal Reserve System as to whether any regulation implementing section 3.7(b) of this Act or the other provisions of title III relating to the authority under section 3.7(b) conforms to national banking policies, objectives, and limitations, simultaneously with promulgation of any such regulation under this Act, and simultaneously with promulgation of any regulation implementing section 2.3 of this Act, the Farm Credit Administration shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in paragraph (2), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: 'That Congress disapproves the regulation promulgated by the Farm Credit Administration dealing with the matter of   , which regulation was transmitted to Congress on   .', the blank spaces therein being appropriately filled.

"(2) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided in paragraph (1).

"(3) For the purposes of paragraphs (1) and (2) of this subsection—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

"(4) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation."

SEC. 508. Title V of the Farm Credit Act of 1971 is amended by adding the following section at the end thereof:

"SEC. 5.30. GENERAL ACCOUNTING OFFICE AUDIT: REPORT TO CONGRESS.—

"(a) The Comptroller General shall conduct an evaluation of the programs and activities authorized under the 1980 amendments to this Act, and shall make an interim report to the Congress no later than December 31, 1982, and a final report to the Congress no later than December 31, 1984. The Comptroller General shall include in such evaluation the effect that this Act, as amended, will have on agricultural credit services provided by the Farm Credit System, Federal agencies, and other entities. The Comptroller General may make such interim reports to the Congress on the programs and activities under these amendments as the Comptroller General deems necessary or as requested by Members of Congress.

"(b) For the purpose of conducting program evaluations required in subsection (a) of this section, the Comptroller General or his duly authorized representatives shall have access to and the right to examine all books, documents, papers, records, or other recorded information within the possession or control of the Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations and banks for cooperatives.".

SEC. 509. Paragraph (1) of section 1141b of title 12 of the United States Code is amended to read as follows:

> "(1) shall maintain its principal office within the Washington, D.C.-Maryland-Virginia standard metropolitan statistical area, and such other offices in the United States as in its judgment are necessary".

BRIEF EXPLANATION

H.R. 7548, as amended by the Committee, modifies the Farm Credit Act of 1971 to update and improve the operation of the Farm Credit System. It enhances the ability of the Farm Credit System institutions to serve the credit and related needs of their member-borrowers—U.S. farmers, ranchers, and producers and harvesters of aquatic products, and their cooperatives. The bill also amends certain provisions of the Act pertaining to the Farm Credit Administration, the agency responsible for supervising and examining the System institutions.

SUMMARY OF MAJOR PROVISIONS

The major provisions of H.R. 7548 would—

(1) Reduce—from 80 percent (70 percent in the case of rural utility cooperatives) to 60 percent in the case of rural utility and service cooperatives and, in limited circumstances, local farm supply cooperatives—the minimum voting control of a cooperative that must be held by farmers, ranchers, and aquatic producers or harvesters, or eligible cooperatives in order for the cooperative to be eligible for loans from a bank for cooperatives;

(2) authorize Federal land banks to make loans in excess of 85 percent—but not in excess of 97 percent—of the appraised value of the real estate security if the loans are guaranteed by Federal or other governmental agencies;

(3) authorize Federal land banks and production credit associations to make loans to finance basic processing and marketing directly related to an applicant's farm, ranch, or aquatic operation and those of other eligible farmers, ranchers, or producers or harvesters of aquatic products but only if the applicant's farming, ranching or aquatic op-

eration supplies at least 20 percent of the amount of the commodity to be processed or marketed;

(4) authorize the banks for cooperatives to finance transactions for the exportation or importation of agricultural and aquatic products by U.S. cooperatives that are borrowers from the banks, and provide the cooperatives with other financial-type services to enable them to participate effectively in international markets for agricultural and aquatic products;

(5) ensure that other financing institutions which meet criteria specified in the bill have reasonable access to the financial services of the Federal intermediate credit banks;

(6) with respect to producers and harvesters of aquatic products—

(a) authorize Federal land banks to make real estate mortgage loans to producers or harvesters of aquatic products;

(b) authorize Farm Credit System institutions to provide to borrowers, members, and applicants financial-related services appropriate to their aquatic operations;

(c) authorize Federal intermediate credit banks to discount aquatic loans of lending institutions outside the Farm Credit System; and

(d) clarify that cooperatives engaged in furnishing aquatic business services are eligible to borrow from the banks for cooperatives;

(7) authorize Farm Credit System lending institutions to invest or participate in loans with other System institutions, and authorize Federal land banks to sell loans to, and participate in loans with, lending institutions outside the System;

(8) authorize any Farm Credit System institution to enter into general loss-sharing agreements with other System institutions;

(9) clarify the authority of Farm Credit System institutions to set interest rates without limitation by State law and extend a similar exemption to livestock credit corporations organized in conjunction with cooperatives and eligible to discount with Federal intermediate credit banks;

(10) specifically authorize Farm Credit System institutions to sell to their members, on an optional basis, credit or term life and credit disability insurance appropriate to protect the loan commitment, and other insurance necessary to protect the member's farm or aquatic unit, but limited to hail and multiple-peril crop insurance, title insurance, and insurance to protect the facilities and equipment of aquatic borrowers.

(11) authorize Farm Credit System banks to organize federally chartered corporations to perform services and functions (other than the extension of credit or the provision of insurance services for borrowers) that the banks are authorized to perform under the Farm Credit Act of 1971;

(12) authorize Farm Credit System institutions to extend credit and other services to persons in the Virgin Islands of the United States;

(13) require each Federal land bank association and production credit association to prepare a program for furnishing sound and constructive credit to young, beginning, and small farmers and ranch-

ers, and require the Farm Credit Administration to report to the Congress on the activities and achievements under such programs;

(14) authorize Federal land banks and Federal land bank associations to pay patronage refunds;

(15) authorize Federal land bank associations to pay dividends to stock and participation certificate holders at rates based on the contributions of each class and issue of stock or participation certificate to the capital and earnings of the Federal land bank;

(16) authorize Federal land bank associations to contribute to the capital of Federal land banks, and authorize the banks to issue equities to evidence such contributions;

(17) authorize the district Farm Credit boards to approve policies under which loans made or discounted by the Federal intermediate credit banks (other than aquatic loans) may be repayable within 10 years, as opposed to 7 years under current law;

(18) authorize production credit associations to issue participation certificates to lending institutions outside the Farm Credit System;

(19) authorize Federal intermediate credit banks and banks for cooperatives to transfer more than 25 percent of net annual earnings to reserve or allocated surplus accounts (under existing law, there is a 25-percent upper limit on such transfers of earnings); and authorize banks for cooperatives to lend to parties to acquire facilities and equipment to be leased to eligible cooperatives: and authorize banks for cooperatives to lend to parties to acquire facilities and equipment to be leased to eligible cooperatives;

(20) with respect to any election of a Farm Credit district director, provide that the list of nominees for the position may consist of the two candidates receiving the highest number of nomination votes, rather than, as under existing law, the three candidates receiving the highest number of nomination votes;

(21) authorize presidents of Farm Credit System banks to designate persons to represent them on interbank finance committees;

(22) increase the daily rate of compensation for members of the Federal Farm Credit Board from $100 per day to the daily equivalent of the GS-18 pay rate;

(23) authorize the Farm Credit Administration and the banks of the Farm Credit System to dispose of property they are authorized to acquire under existing law;

(24) require that proposed and final regulations of the Farm Credit Administration be submitted before publication to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry, and subject to a two-House legislative veto, regulations implementing the provisions of the bill relating to the access of other financing institutions to the financial services of the Federal intermediate credit banks and, if there are unresolved differences between the Federal Reserve Board and the Farm Credit Administration, regulations implementing the provisions of the bill relating to the international financing authorities of the banks for cooperatives;

(25) direct the Comptroller General of the United States to evaluate programs and activities authorized by the bill; and

(26) permit the Farm Credit Administration to locate its principal office anywhere in the Washington metropolitan area.

PURPOSE AND NEED

H.R. 7548 amends the Farm Credit Act of 1971, the statute under which the Farm Credit System and the Farm Credit Administration operate. The 1971 legislation gathered into a single statute and updated a series of laws, dating back to the Federal Farm Loan Act of 1916, that established the banks and associations of the Farm Credit System and a Federal agency to supervise the System. The purpose of H.R. 7548, as amended by the Committee, is to provide the institutions of the System with additional or revised authorities to enable them to better serve the credit and related needs of their borrower-members—farmers, ranchers, and commercial fishermen of the Nation and their cooperatives. The bill also makes some changes in the basic charter of the Farm Credit Administration, the Federal agency charged with supervising and examining the institutions of the System.

BACKGROUND

The Farm Credit System is composed of a series of banks and associations which, while chartered under Federal law, are owned by their borrower-members and operated on a cooperative basis. Their function is to serve the unique credit needs of farmers, ranchers, and aquatic producers and harvesters. Three separate types of institutions make up the System: (1) the Federal land banks and the local Federal land bank associations, (2) the Federal intermediate credit banks and the local production credit associations, and (3) the banks for cooperatives. The Farm Credit System is supervised by the Farm Credit Administration, an independent agency in the executive branch of the government.

There are 12 farm credit districts in the United States. There is a Federal land bank, Federal intermediate credit bank, and a bank for cooperatives in each district. The district banks operate under the policy direction of a seven-member district farm credit board of directors. Six members of each board are elected—two by the Federal land bank associations, two by the production credit associations, and two by the cooperatives that borrow from the banks for cooperatives. One member is appointed by the Governor of the Farm Credit Administration with the advice and consent of the Federal Farm Credit Board. The Federal land bank associations and production credit associations operate under the direction of boards that are elected by their member-borrowers.

Federal land banks and Federal land bank associations

The Federal land banks and the predecessors to Federal land bank associations were established under the Federal Farm Loan Act in 1916 to provide a source of mortgage money for farmers. The land banks make first mortgage loans through the 505 local Federal land bank associations throughout the country. The loans have terms of from 5 to 40 years and are secured by first liens on interests in real estate. They are used for the purchase of farmland, refinancing mortgages and paying other debts, purchasing equipment and livestock, and constructing and repairing buildings. The land banks are also authorized to make loans to rural homeowners and persons furnishing farm-related services to farmers and ranchers.

As of December 31, 1979, the land banks had $31.3 billion in loans outstanding. In 1979, interest rates charged by the land banks ranged from 8.25 to 10.25 percent.

Federal intermediate credit banks and production credit associations

The Federal intermediate credit banks were established under the Agricultural Credits Act of 1923. The local production credit associations were established under the Farm Credit Act of 1933. With funds obtained through the Federal intermediate credit banks, the production credit associations provide eligible borrowers with loans with terms of up to seven years (15 years for aquatic producers). Loans are made primarily to finance the operating and capital credit needs of eligible farmers, ranchers, and fishermen. The production credit associations also extend credit to persons furnishing farm-related services to farmers and ranchers and to rural homeowners. The Federal intermediate credit banks are also empowered to discount notes representing loans made by other financial institutions for agricultural purposes.

On December 31, 1979, the Federal intermediate credit banks and production credit associations had $19.1 billion in loans outstanding, with interest rates during 1979 ranging from 8.9 to 11.6 percent.

Banks for cooperatives

The Farm Credit Act of 1933 authorized the establishment of the banks for cooperatives to provide credit services to eligible cooperatives. Eligible cooperatives include associations of farmers, ranchers, or aquatic producers or harvesters (or federations of such associations) that are operated on a cooperative basis and that engage in marketing, service, and supply operations. Banks for cooperatives make loans for such purposes as construction, remodeling, or expanding of facilities and current or seasonal operating expenses.

The banks for cooperatives had $8.1 billion in loans outstanding as of December 31, 1979, and charged interest rates during 1979 ranging from 9.25 to 14.75 percent.

The Central Bank for Cooperatives, located in Denver, Colorado, participates with district banks in loans to large cooperatives and provides a means to spread the risk of sizeable loans throughout the banks for cooperatives system.

Funding

The capital needed to establish the institutions of the Farm Credit System was provided largely by the Federal Government. The institutions of the System repaid the last of this government seed money in 1968. The System is now capitalized exclusively by its members. A borrower from a land bank or production association invests in the stock of his local association in an amount equaling a portion (five to ten percent) of the amount of the loan. In turn, the voting stock of each Federal land bank and each Federal intermediate credit bank is held by the associations operating in its district. Cooperatives must buy stock of the district bank for cooperatives to be able to borrow from that bank. Other financing institutions must invest in a Federal intermediate credit bank in order to discount loans with the bank.

Loan funds for the institutions of the Farm Credit System are obtained through the sale of bonds and discount notes in the Nation's money markets by the System's fiscal agency in New York City. These securities are not guaranteed by the government and ordinarily sell at rates only slightly above rates on Federal Government paper. Interest rates charged by institutions of the System on their loans fluctuate in relation to the cost of money to the System.

Federal Farm Credit Administration and Federal Farm Credit Board

The Farm Credit Administration is the Federal agency that supervises and examines the banks and associations in the Farm Credit System and ensures that these institutions operate according to the law and System regulations. The Farm Credit Act of 1953 established the Federal Farm Credit Board as the policy-making body of the Farm Credit Administration. The Federal land bank associations, the production credit associations, and the cooperatives that borrow from a district bank for cooperatives each nominate one candidate from the district for the Federal Board for consideration by the President. The President then appoints (not necessarily from among the nominees) one Board member from each of the 12 districts, with the advice and consent of the Senate. The appointed members serve a term of six years and are not eligible for reappointment. The thirteenth member of the Board is designated by the Secretary of Agriculture and serves as his representative. The Federal Board appoints the Governor, the chief executive officer of the Farm Credit Administration, who serves at the pleasure of the Board.

All of the expenses of the Farm Credit Administration are paid by the System through assessments. While the budget of the agency is submitted annually to the Congress for approval, no appropriations are made for its operating expenses. The agency is required to make annual reports to the Congress to keep it apprised of the condition of the System and the manner and extent to which the purposes of the Farm Credit Act of 1971 are being carried out.

DEVELOPMENT OF BILL

The Federal Farm Credit Board, in 1978, requested that each district Farm Credit board submit recommended changes in the Farm Credit Act of 1971 which it deemed necessary to meet the credit and related needs of agriculture in the 1980s, or which it believed would result in greater efficiency in the internal operation of the Farm Credit System.

The twelve district boards submitted a total of 81 proposed changes to the 1971 Act. The Policy Coordinating Committee of the Farm Credit System studied these proposals and recommended that 28 of them be included in a legislative package. A legislative package consisting of these proposals was approved by the twelve district boards and the Board of Directors of the Central Bank for Cooperatives. The Federal Farm Credit Board then gave its unanimous support to the proposals and instructed that they be recommended to the Congress.

A bill, H.R. 4782, containing the 28 proposals was introduced, upon request, by Representative Ed Jones, in July 1979. After extensive hearings in the field and in Washington, D.C., a new bill, H.R. 7548, was introduced by Mr. Jones and Mr. Madigan, Chairman and Ranking Minority Member, respectively, of the Subcommittee on Conservation and Credit. H.R. 7548 contained many of the proposals suggested by the System, as well as certain additional provisions. The bill, as modified by the Subcommittee and full Committee, will equip the System with the additional tools to enable it to continue to serve the specialized and changing credit and related needs of its owners-America's farmers, ranchers, fishermen, and their cooperatives.

Cooperative eligibility

Changing demographic patterns in rural America make, or may make, it impossible for some cooperatives to meet the present eligibility requirements for obtaining financing from the banks for cooperatives. The Farm Credit Act of 1971, as amended, established the farmer voting control requirement at 80 percent generally and 70 percent for rural utility cooperatives. For example, some rural electric and telephone cooperatives are experiencing very severe difficulties in meeting the 70 percent farmer control requirement. The regulations of most State public service commissions require that rural electric and telephone cooperatives serve everyone located in their territory—farmers and non-farmers alike. In addition, regulations of the Rural Electrification Administration (REA) require that all rural utility cooperative users have the right to vote in the affairs of their cooperatives. As a result of this "area coverage rule", these cooperatives have no control over who may and who may not become a member of the organization. The Farm Credit Administration estimates that a significant number of rural electric, rural telephone, utility and service cooperatives will be unable to receive credit from the banks for cooperatives unless the voting control requirement is lowered to 60 percent.

Similar eligibility problems face some local farm supply cooperatives. Their situation is not identical to that encountered by rural utility cooperatives in that the "area coverage rule" does not apply to supply cooperatives. Yet, the same underlying problem exists. An increasing non-farmer population in rural areas is making it difficult for some supply cooperatives to maintain eligibility for banks for cooperatives financing.

The bill contains provisions reflecting the circumstances faced by these cooperatives. It reduces to 60 percent the farmer control requirement for rural electric, telephone, public utility, and service cooperatives. It would also apply the 60 percent farmer control requirement to a limited number of local farm supply cooperatives—those which have experienced a reduction in the percentage of farmer membership due to changed circumstances beyond their control, and which are located in communities not adequately served by other suppliers. The same voting control requirement would apply to competitor supply cooperatives. The present 80 percent farmer control requirement for all other cooperatives would be retained. Each Farm Credit district board would be allowed, however, as under present law, to establish higher voting control requirements for any or all types of cooperatives. The primary objective is not to make eligible for banks for cooperatives financing cooperatives not now meeting requirements; it is to ensure that farmer-controlled cooperatives borrowing from their banks will continue to be able to do so.

Federal Land Banks loan limitations

Recent developments may make it increasingly difficult for farmers with low equity to obtain loans from the Federal land banks under present statutory limitations. To illustrate, in the past, a land bank was able to make a joint loan with the Farmers Home Administration to a young or other low-equity farmer, with the land bank holding a first lien on the security and the Farmers Home Administration making a subordinated loan. However, the Agricultural Credit Act of 1978 shifted the emphasis of Farmers Home Administration loan programs from direct loans to loan guarantees. In order to be able to continue working with the Farmers Home Administration, and other agencies adopting the loan guarantee approach, in serving farmers who otherwise would be unable to borrow from the land banks, the authority to lend more than 85 percent of the appraised value of the security, the present statutory limit, is needed. H.R. 7548 will allow Federal land banks to make loans for up to 97 percent of the appraised value of the real estate security where loan guarantees are provided by a Federal agency, such as the Farmers Home Administration, or by a State or other governmental agency. This change should be particularly helpful to many young and beginning farmers and ranchers who may lack the equity required of borrowers under the present terms of the law. And, in view of the guarantee, the position of the land banks would be adequately protected.

Processing and marketing loans

In order to obtain a higher return from their production, many farmers are extending their operations beyond the initial production stage into processing and marketing. In order to make the best use of their investment in processing and marketing facilities and provide a needed service to the local agricultural community, many farmers process or market their neighbors' production, as well as their own. According to the 1974 agricultural census, more than 40 percent of farmers receive income for performing some type of custom service for other farmers. Under H.R. 7548, farmers (as well as producers and harvesters of aquatic products) would be able to finance their processing and marketing activities through Farm Credit System institutions, if at least 20 percent of the commodity processed or marketed is their own production. This would include activities such as the production of fuel from agricultural commodities. Those for whom the borrower would perform processing or marketing would also have to be farmers or aquatic producers eligible to borrow from the System lending institutions. The clientele to be served by this authority would, therefore, consist entirely of those already eligible to borrow from the Federal land banks and production credit associations. The bill would permit each district Farm Credit board to set a higher "throughput" requirement for the region it serves, thus allowing for variations in practice and need among areas of the country.

Banks for Cooperatives export and import financing

The bill addresses the need to expand U.S. agricultural exports and equip U.S. farmer cooperatives to play a more active role in marketing their products overseas and in import activities. This need is felt within the agricultural community. American farmers have done an outstanding job of producing commodities for export. American farmers have increased their share of world agricultural trade from 14.1 percent in 1970 to 17.3 percent in 1979.

American exports of agricultural commodities are of increasing importance to this Nation's trade balance with other countries. According to the U.S. Department of Agriculture, the value of agricultural exports during 1980 will total between $40–$45 billion. Since agricultural imports during the year are expected to amount to $17 to $19 billion, the U.S. agricultural trade balance in 1980 will likely be in surplus by nearly $25 billion. This compares with an agricultural trade surplus of only $1 billion in 1969.

Exports are of crucial importance for the agricultural sector of the Nation's economy. Agricultural exports account for about one-fifth of all farm production; for some commodities the proportion is one-half or more. For producers of these commodities, export markets are essential. For example, about one-half million U.S. farm workers were employed in the production of commodities exported in 1979. Moreover, agricultural exports have stimulated related business activities such as input purchases from other sectors. The U.S. Department of Agriculture estimates that $1.00 of agricultural exports in 1979 generated nearly $2.05 in direct and supporting economic activity. In total, an estimated 1.1 million full-time civilian jobs were related to agricultural exports in 1979.

Cooperatives have an important role to play in returning more of the margin from export transactions to farmers, and in supplying U.S. agricultural commodities to both newly developing foreign markets and to established markets in which competition from other agricultural exporting countries is increasing. Interest in cooperative exports is increasing, in part because of the greater recognition of the special role that cooperatives can play in strengthening farm incomes and holding foreign markets. Similarly, cooperatives can play a significant role for their members in connection with import transactions, particularly for farm supplies.

Under present law, the BCs may lend only to eligible domestic cooperatives. Thus, the banks may finance export transactions of borrower cooperatives up to the domestic point of export. But they are not now authorized to provide the range of financial services which commercial banks are able to furnish to their borrowers. Such services include interim financing of foreign buyers of American agricultural commodities, as well as related financial assistance.

The bill would authorize the BCs to engage in international banking activities which facilitate the agricultural export and import transactions of U.S. farmer cooperatives. The BCs would be equipped to offer several basic financial services to cooperatives, and to domestic and foreign parties to export and import transactions of cooperatives to facilitate international trade. Among other things, this would include, in addition to lending, (a) making deposits in foreign banks, (b) receiving and holding credit balances, and (c) engaging in currency exchange. The amendment would also allow the BCs to participate in ownership in certain foreign institutions for the sole purpose of collecting information about foreign markets and expediting various aspects of international transactions. The bill contains provisions ensuring that the services of the BCs in this field will not be extended to international transactions of non-cooperatives.

Other financing institutions OFI's

The Farm Credit Act of 1923 created the Federal intermediate credit banks (FICBs) and authorized them to discount loans made to farmers and ranchers by "other financing institutions", i.e., lenders outside the Farm Credit System. Heretofore, limited use has been made of this authority. For example, as of May 31, 1980, 150 OFI's had $774,493,000 in loans outstanding with the FICBs. While this is 30 percent more than the amount of loans to OFI's outstanding during the previous year, the total constitutes only about three percent of the total amount of loans discounted by the FICBs.

The bill will enhance the opportunity of OFIs to utilize the financial services of the FICBs. It does so by amending section 2.3 of the Farm Credit Act of 1971 in two important respects. First, it would permit the FICBs to make to and discount for OFIs all of the types of loans, for all of the purposes, that production credit association (PCAs) are now authorized to make. Under present law, PCAs may (and OFIs may not) discount with the FICBs loans to farm related businesses, rural residents and aquatic producers. In addition, PCAs may (an OFIs may not) discount with the banks certain loans for processing and marketing activities and for "other needs" of agricultural and aquatic producers. The bill would remove these disparities from the law and, in this respect, provide for equality of treatment for OFI's and PCA's.

The bill would also add to the statute assurances that the FICB discount privilege is made available on a reasonable basis to eligible OFIs. It would establish four criteria for determining an OFIs eligibility for this purpose. The four criteria are:

1. Significant involvement in agricultural or aquatic lending.
2. A continuing need for supplementary sources of funds for agricultural or aquatic lending.
3. Limited access to national capital markets.
4. Willingness not to use funds to expand non-agricultural or aquatic lending (i.e., an OFI would not be allowed to use FICB funds to expand financing for parties and purposes ineligible to discount with the FICB).

This provision would extend the FICB discount privilege to a large number of OFIs which need this service to more adequately serve agricultural and aquatic borrowers. The Farm Credit Administration estimates that if this provision had been in effect on September 30, 1979, the discount privilege would have been made available to approximately 2,500 commercial banks. Further, the agency estimates that the provision would have made it possible for OFI discounting to constitute as much as 30 percent of the total amount of agricultural loans discounted by the FICBs.

Aquatic provisions

This bill would authorize the Farm Credit System to provide U.S. fishermen with the same range of credit and related services it now provides to farmers and ranchers. It would do so by amending the

Farm Credit Act of 1971 which provided the System with the initial authority to make aquatic loans. Under the Act, the production credit associations were authorized to lend to producers and harvesters of aquatic products, and the banks for cooperatives were authorized to lend to cooperatives formed by such producers and harvesters.

Fundamental changes in the conditions of the U.S. fishing industry have occurred since the passage of the 1971 Farm Credit Act. Successful exploitation of the opportunities opened up by the 200-mile limit will require greater capital investment in the commercial fishing industry. The production credit associations have proved their ability, under the 1971 Act, to help aquatic producers meet their increasing need for credit and related services. While maintaining an aquatic loan loss ratio of less than three percent, production credit associations increased those aquatic loans by more than 250 percent from May 31, 1978 to December 31, 1979.

The bill would amend the Act to: (1) allow Federal land banks to make long-term loans to producers and harvesters of aquatic products, (2) authorize the Federal intermediate credit banks to discount the aquatic loans of other financing institutions, (3) clarify that cooperatives solely engaged in furnishing aquatic business services are eligible to borrow from the bank for cooperatives, and (4) authorize Farm Credit institutions to provide to borrowers, members and applicants financially related services appropriate to their aquatic operations. These provisions will enable the System institutions to provide a needed, more comprehensive credit service to American "farmers of the sea". The services the System will be empowered to offer fishermen will parallel those that it may offer to farmers and ranchers.

Loss sharing

Under present law, all of the banks in the System are jointly and severally liable on System-wide bonds and discount notes sold to the investing public to provide capital for the System. Current law explicitly provides for loss-sharing agreements among some, but not all, classes of System institutions. The bill would make clear that any System institution may enter into general loss-sharing agreements with other System institutions. This authority would enhance the capital vitality of the System, thereby helping to maintain the System's high standing in the Nation's money markets.

State interest rate limitations

State limitations on interest rates are not applicable to loans made by System institutions. However, because language in the Farm Credit Act of 1971 relating to this issue is not as explicit as it might be, questions as to the status of System lending under State-imposed interest rate limitations have been raised from time to time. The bill makes clear in explicit terms that interest rates on loans made by institutions of the System are not subject to any interest rate limitations imposed by any State constitution, statute, or other law. The bill addressed the subject to eliminate any possible concern either inside or outside the System about this issue by explicitly providing for Federal preemption of State laws in this area. The bill also would extend this exemption to certain agricultural credit corporations which ordinarily obtain their funds exclusively from the FICBs.

System insurance activities

The Farm Credit Act of 1971 authorized System institutions to provide their members certain financially related services. While it was clear that insurance services were among the services contemplated, the Act itself contained no guidance in this regard and the legislative history on the subject was not altogether clear. Various controversies arose over the proper scope and range of insurance services which the System might offer. The bill would clarify the matter by specifically enumerating the types of insurance System institutions may offer to their members, on an optional basis.

Establishment of service organizations

Under current law, the district boards are empowered to authorize agreements between System institutions to provide for services which can most effectively be made available by joint undertakings. There is no authority, however, for the institutions to organize corporations to perform those functions which may be more effectively performed through a separate legal entity. Experience has shown that the operation of these service entities in other than corporate form is frequently cumbersome and inefficient because of the lack of proper corporate direction, management, and control. Because of the administrative advantages and efficiencies the corporate form would provide, it would ultimately benefit farmers, ranchers, fishermen and their cooperatives who own the System.

Extension of system services to Virgin Islands

Interest has been expressed in extending the services of the Farm Credit System to the Virgin Islands of the United States. H.R. 7548 would allow the Farm Credit System to make its services available to agricultural and aquatic producers in the Virgin Islands if authorized by the Federal Farm Credit Board. Services would be offered, however, only after the feasibility of doing so is established to the satisfaction of the Farm Credit Administration. Upon a favorable decision by the Farm Credit Administration, the Virgin Islands would be included in one of the 12 Farm Credit districts, as is Puerto Rico under present law.

Young, beginning, and small farmers and ranchers

The decline in both the number of smaller farms and their relative contribution to American agriculture is apparent. Since 1954, the number of farms across the United States has decreased from 5.4 to 2.7 million. A contributing cause of this trend is the increasing difficulty in entering the farming enterprise. Farm real estate values increased across the Nation by 263 percent over the period from 1967 to 1977. Costs of machinery, equipment, and other facilities have skyrocketed. As costs escalate, those who do not already have substantial assets are finding it increasingly difficult to begin to farm.

In view of these circumstances, the bill contains a provision designed to ensure that PCAs and FLBs in all Farm Credit districts are making conscious and coordinated efforts to meet the unique credit needs of young, beginning, and small farmers and ranchers. It would require the associations, under policies adopted by district Farm Credit boards, to prepare programs for providing sound and constructive credit and related services to these farmers and ranchers through coordinated programs. Results of such programs would be included in the Farm Credit Administration's annual report to Congress.

Lease financing

The bill would authorize the BCs to finance domestic leasing, including leverage leasing transactions between U.S. farmer or aquatic cooperatives and other domestic parties. This would permit BC financing for transportation, storage, processing, marketing, and other facilities and equipment obtained by lease. The leasing approach can often result in less cost to cooperatives (and their members) and less capital outlay than is possible through direct ownership of the facilities. Cooperatives have, for several years, been unable to utilize their customary source of funds—the BCs—in connection with leverage lease transactions for equipment and facilities. This is because the BCs have been authorized to lend only to cooperatives; they could not lend to the non-cooperative owner-lessors of equipment and facilities. And transactions in which lessees (in this case cooperatives) finance the property under a leveraged lease do not qualify for favorable tax treatment. Therefore, financing for leverage lease transactions of cooperatives otherwise eligible to borrow from the BCs has had to originate from other sources. The bill would enable cooperatives to utilize financing from the lender they own, the BCs, in connection with their leasing transactions.

Patronage refunds: Differential dividends

The Farm Credit Act of 1971 authorizes the production credit associations and banks for cooperatives to make patronage refunds—a customary means by which cooperative-type organizations return earnings to their patrons. However, the Federal land banks (FLBs) and Federal land bank associations (FLBAs) do not have this authority. The bill would provide this authority enabling FLBs and FLBAs to distribute earnings to patrons more equitably on the basis of their relative contribution to the institution's income rather than on a stock-ownership basis.

The bill would also authorize FLBAs to pay differential dividends to members based on the amount of interest paid to the FLBs. The FLBs are presently authorized to pay differential dividends to their stockholders—the FLBAs. This new authority would allow the FLBAs to pass such dividends through to their members in proportion to their relative contributions to bank earnings.

Contributions to capital

H.R. 7548 would authorize Federal land bank association (FLBAs) to contribute to the capital of Federal land banks (FLBs) and the FLBs, in turn, to issue equities to the FLBs to evidence such contribution. This can result in a more efficient use of association and bank capital. Current law does not specifically authorize FLBs to institute recapitalization programs of this nature. Such transfers should, for accounting purposes, be considered "contributed" or "donated" capital. The bill would give clear authority for such accounting.

Ten-year production credit association loans

There is a need, in at least some Farm Credit districts, for production credit association loans with terms of more than seven years to enable farmers to finance their ever-increasing costs of production. With a 10-year term loan authority, production credit associations would be able to finance expensive capital improvements which could not be amortized over a seven-year period without placing an undue economic strain on the farmer.

To meet this need, the bill would authorize a district Farm Credit board to raise the maximum term of loans (other than aquatic loans) discounted with a Federal intermediate credit bank from seven to ten years, subject to the regulations of the Farm Credit Administration. Thus, production credit associations (PCAs) and other financing institutions (OFIs), which obtain their funds from Federal intermediate credit banks, would be able to extend 10-year loans to eligible borrowers in districts where the board exercises this authority. As provided under current legislation, the maximum maturity of loans to producers and harvesters of aquatic products would remain at 15 years.

Loan participation with nonsystem lenders

The Farm Credit Act of 1971 authorized the PCAs and the banks for cooperatives (BCs) to participate with other lenders in loans to eligible borrowers. No such authority was given the FLBs. Further, the requirement that farmers or aquatic borrowers purchase stock in the association served to impede or complicate PCA—other lender participations. It caused the association to become a visible party in transactions in which the commercial lender was the lead institution.

The bill would streamline the PCA-commercial bank participation arrangement, as well as authorize an FLB-commercial bank participation arrangement. It would allow an association to issue non-voting stock covering the association's share of the loan directly to the commercial bank. Commercial bankers have indicated that they will be more likely to participate with PCAs if the current authority can be modified in this manner. They have also welcomed the opportunity to participate with Federal land banks in making real estate loans.

Earnings and reserves

Existing law does not permit FICBs and BCs to transfer more than 25 percent of their net savings to allocated surplus. There would appear to be no valid reason to continue to so restrict the ability of these institutions to build their surplus accounts. Removal of the 25 percent limitation would enable these institutions, under FCA regulations, to create and maintain adequate risk funds.

District director election process

With respect to any election of a Farm Credit district director, the bill would provide that the list of nominees be comprised of the two candidates receiving the highest number of nomination votes. Currently, the law requires that the list include the three candidates with the highest number of nomination votes. This change would ensure that the person elected to a district board would have received a majority of the votes cast by the electorate.

Authority to delegate

Under current law, System finance committees and subcommittees must meet to determine the amount, maturities, rate of interest and participation in each issue of joint, consolidated, or System-wide obligations. The law also requires these committees and subcommittees to be composed of bank presidents. This technical and financial duty requires the presidents to expend time in an area which requires specialized expertise, and it would be more efficient and effective to permit the presidents to delegate this responsibility to a bank's chief financial officer. The bill would provide for such delegation.

Federal Farm Credit Board compensation

H.R. 7548 would increase the daily rate of compensation of the Federal Farm Credit Board from $100 per day to the daily equivalent of Federal employees at grade GS-18. The current compensation for Federal Farm Credit Board members was established in 1966, when it was roughly equivalent to the daily rate of pay for persons in the GS-18 Federal grade level. The rate for the GS-18 grade has increased very substantially during the intervening years; Federal Board compensation has not. The bill would remedy this situation and tie the rate to increases in the pay of Federal employees, providing Board members with commensurate increases without the enactment of special legislation applicable to the Board.

Disposition of property by FCA

The present law contains no authority for the FCA to dispose of property it is authorized to acquire. The bill would fill this gap and would authorize the proceeds of the disposition to be placed into the fund which is used to pay the expenses of the Administration.

Congressional oversight

The bill would incorporate into the Farm Credit Act of 1971 significant new authorities. This is particularly true with respect to provisions concerning the access of non-System financial institutions (OFIs) to the services of the FICBs and the export-import financing activities of the BCs. The Committee is vitally interested that these new powers, as well as existing authorities, are implemented and operating in conformity with the statute. To this end, the bill contains provisions (1) authorizing a two-House legislative veto of regulations implementing the OFI and international financing authorities, (2) making possible prepublication Congressional review of all regulations issued by the Farm Credit Administration, and (3) requiring evaluation by the Comptroller General of the programs and activities authorized by the bill.

SECTION-BY-SECTION ANALYSIS OF H.R. 7548

The bill, H.R. 7548, as amended by the Committee, contains a short title and five separate titles which parallel the titles of the Farm Credit Act of 1971:

(1) Title I—Federal Land Banks and Associations

(2) Title II—Federal Intermediate Credit Banks and Production Credit Associations

(3) Title III—Banks for Cooperatives

(4) Title IV—Provisions Applicable to Two or More Classes of Institutions of the System

(5) Title V—District and Farm Credit Administration Organization

SHORT TITLE

The first section provides that the bill may be cited as the "Farm Credit Act Amendments of 1980".

TITLE I—FEDERAL LAND BANKS AND ASSOCIATIONS

Section 101

Section 101 amends section 1.4 of the Farm Credit Act of 1971 (12 U.S.C. 2012) which sets out the general corporate powers of the Federal land banks. References in this analysis to "the Act" are to the Farm Credit Act of 1971, as amended (12 U.S.C. 2001, et seq).

Loan Participation.—The banks are now authorized by section 1.4 (12) of the Act to participate in loans with other Federal land banks. Subsections (1) and (2) expand this authorization to include participations in loans with other Farm Credit System institutions and, in loans that the bank may make under the Act, with lenders which are not System institutions. The bill elsewhere contains similar provisions authorizing intra-System loan participations by other System institutions. Subsection (2) also subjects participations among System institutions to common provisions set out in Title IV of the bill.

Deposits.—Section 1.4(12) of the Act authorizes the land banks to deposit their securities and funds with member banks of the Federal Reserve System. Subsection (3) would expand that authority to permit deposits with State banks insured under the Federal Deposit Insurance Act which are not members of the Federal Reserve System.

Sale and Purchase of Loans.—Subsection (4) amends section 1.4 (15) of the Act to provide new authority to the land banks to sell interests in loans to lenders which are not Farm Credit System institutions and to buy from and sell to System institutions interests in loans and other financial assistance extended, and nonvoting stock. These provisions, together with those in subsections (1) and (2) and elsewhere in the bill, are designed to permit System institutions to make more efficient use of their equity base and, in conjunction with commercial banks, more fully meet the needs of borrowers. The provision concerning stock allows for capitalization of the interests in loans purchased or sold on an intra-System basis.

Contributions of Capital: Loss Sharing.—Subsection (5) adds to section 1.4 new provisions to make clear that the banks may accept contributions of capital from the Federal land bank associations and enter into agreements with other System institutions to share losses of whatever nature. Similar provisions elsewhere in the bill clarify the authority of the other System institutions to enter into such agreements.

Section 102

Section 102 amends section 1.5 of the Act (12 U.S.C. 2013) which pertains to bank stock.

Technical Correction.—Subsection (1) corrects the spelling of the word "hypothecated" in section 1.5(b) of the Act.

Issuance of Stock.—Subsection (2) amends section 1.5(d) of the Act to authorize the banks to issue nonvoting stock to (a) borrowers as patronage refunds, and (b) other Farm Credit System institutions. These provisions provide for stock issuance in connection with other changes in Title I of the bill which authorize the land banks to make patronage refunds, to lend to aquatic producers or harvesters, and to buy from and sell to System institutions interests in loans and other financial assistance extended.

Patronage Refunds: Equities.—Subsection (3) adds to section 1.5 of the Act provisions authorizing the land banks to pay patronage refunds to borrowers (an authority the production credit associations and banks for cooperatives already possess) and to issue equities to Federal land bank associations to evidence capital contributions to the banks.

Section 103

Loan Participations.—Section 103 amends section 1.6 of the Act (12 U.S.C. 2014) to authorize the land banks to participate with other lenders in long-term loans in rural areas defined by the Farm Credit Administration, and to make and participate in loans to producers or harvesters of aquatic products. This provision parallels other provisions in Title I of the bill authorizing loan participations, and recognizes that loans can be made to producers or harvesters of aquatic products who are not necessarily located in rural areas.

Section 104

Interest Rates.—Section 104 amends section 1.7 of the Act (12 U.S.C. 2015) relating to interest rates by inserting a reference to a clarifying provision added to Title IV of the Act dealing with State interest rate limitations. Similar references are added by the bill to the provisions of the Act relating to interest rates charged by other System lending institutions.

Section 105

Aquatic Loans.—Section 105 amends section 1.8 of the Act (12 U.S.C. 2016) by making producers or harvesters of aquatic products eligible to receive services, including loans, from the land banks. This will permit the banks to make long-term real estate mortgage loans to aquatic producers for purposes such as construction of dock and storage facilities and for other long-term credit needs. Such producers are now eligible under the Act to borrow from production credit associations for short- and intermediate-term credit needs.

Section 106

Required Collateral on Government Guaranteed Loans.—Section 106 amends section 1.9 of the Act (12 U.S.C. 2017) pertaining to loan security to permit loans made by a land bank, or participated in by a land bank with a non-System lender, to exceed the ceiling of 85 percent of the appraised value of real estate security (now imposed generally by the Act on land bank loans) but only if the loan is guaranteed by Federal, State, or other governmental agencies and authorized by the Farm Credit Administration. In no event could the loan be made for more than 97 percent of the appraised value of the real estate security. This provision will permit the land banks to continue to serve borrowers (particularly young or beginning farmers) under programs, such as those conducted by the Farmers Home Administration, which are shifting their emphasis from the making of loans to loan guarantees.

Section 107

Loans for Basic Processing and Marketing.—Section 107 amends section 1.10 of the Act (12 U.S.C. 2018) relating to loan purpose by specifying that the land banks may make loans for basic processing and marketing directly related to the applicant's operations and those of other eligible borrowers; however, the applicant's own operations would have to provide at least 20 percent, or such larger percentage as is established by the bank board under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended. Nothing in this provision or in the similar provision in section 210 of the bill relating to lending by the production credit associations is intended to affect in any way the status of producer handlers of milk under the provisions of the Agricultural Adjustment Act, as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

The Committee recognizes that the 20 percent throughput requirement in section 107 and section 210 of the bill represents a substantial reduction in the existing 50 percent throughput requirement established administratively in 1972 by the Farm Credit Administration. The Committee intends that this modification be implemented in a way that will aid and assist essentially smaller farm, ranch or aquatic units in a reasonable extension of the basic farm, ranch or aquatic operation. In implementing this authority, the banks should adopt policies which will safeguard against abuse of this authority by applicants whose basic character would be changed by the operations which would be financed for such applicants.

For those operations not consistent with the intention discussed above, higher throughput requirements should be applied to the applicants. Careful application and enforcement of Farm Credit Administration regulations defining "farmers and ranchers" and "producers or harvesters of aquatic products" will be necessary to meet the Committee's concern in this regard.

Section 108

Financially Related Services for Producers or Harvesters of Aquatic Products.—Section 108 amends section 1.11 of the Act (12 U.S.C. 2019) to authorize the land banks to make financially related services available to borrowers, members and applicants appropriate to their aquatic as well as on-farm operations. This provision parallels other provisions of the bill which authorize the banks to make loans and services available to producers or harvesters of aquatic products.

Section 109

Technical Correction.—Section 109 corrects a technical defect in section 1.12 of the Act (12 U.S.C. 2020) by removing the designation "(a)", which is unnecessary since there are no subsections in this section.

Section 110

General Corporate Powers.—Section 110 amends section 1.15 of the Act (12 U.S.C. 2033) which enumerates the powers of the Federal land bank associations.

Subsections (1) and (2) correct technical defects, respectively, in section 1.15(13) by striking out the word "shall", and in section 1.15 (14) by striking out the word "may" the second time it appears.

Subsection (3) adds a new provision authorizing the associations to contribute to the capital of the land banks, which are authorized elsewhere in Title I of the bill to accept them.

Section 111

Section 111 amends section 1.16 of the Act (12 U.S.C. 2034) which pertains to association stock.

Book Value.—Subsection (1) strikes the word "fair" from the sixth sentence of section 1.16(a) of the Act. The word "fair", modifying the words "book value", is deleted here and in several other provisions of the Act because its meaning is not clear and it does not change the generally accepted meaning of the term "book value".

Stock Purchase.—Subsection (2) adds a new subsection which relieves a borrower of the requirement to purchase land bank association stock with respect to that part of a loan which a land bank sells to a non-System lender or which the non-System lender retains or acquires in participating in a loan with the bank; there is no System need for capitalization of the part of the loan not held by the land bank.

Section 112

Section 112 amends section 1.17 of the Act (12 U.S.C. 2051) which relates to land bank reserves and dividends.

Technical Corrections.—Subsection (1) corrects the spelling of the word "excess" in section 1.17(a) of the Act.

Patronage Refunds.—Subsection (2) amends section 1.17(b) of the Act to authorize the land banks to pay patronage refunds to borrowers and thus complements other provisions of the bill addressing this subject.

Section 113

Association Patronage Refunds: Differential Dividends.—Section 113 amends section 1.18(b) of the Act (12 U.S.C. 2052(b)) to authorize Federal land bank associations to pay patronage refunds, and to prescribe the basis upon which such payments may be made. The revised section would authorize differential dividends between different classes and issues of stock and participation certificate holders on the basis of comparative contributions of the holders to capital or earnings of the land bank by such classes or issues.

Section 114

Association Loss Sharing.—Section 114 amends section 1.19 of the Act (12 U.S.C. 2053) to make clear that the Federal land bank associations may, if authorized by the supervising land bank under the regulations of the Farm Credit Administration, enter into agreements with other System institutions to share losses of whatever nature. The bill elsewhere makes clear that other System institutions have similar authority.

Section 115

First Lien on Stock.—Section 115 amends section 1.20 of the Act (12 U.S.C. 2054) to except from the requirement that the land banks and associations shall have a first lien on stock and participation certificates issued by them, any stock or participation certificates held by other System institutions. Such equities may be issued in connection with intra-System transactions authorized by the bill. For such transactions the protection afforded by a first lien is not considered necessary.

TITLE II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS

Section 201

Section 201 amends section 2.1 of the Act (12 U.S.C. 2072) which sets out the general corporate powers of the Federal intermediate credit banks.

Deposits.—Section 2.1(12) of the Act authorizes the Federal intermediate credit banks to deposit their securities and funds with member banks of the Federal Reserve System. Subsection (1) would expand this authority to permit deposits with State banks insured under the Federal Deposit Insurance Act which are not members of the Federal Reserve System.

Sale and Purchase of Loans.—Subsection (2) amends section 2.1 (13) of the Act to authorize the banks to buy from and sell to other System institutions interests in loans, financial assistance extended, and nonvoting stock. This provision parallels the intra-System loan purchase and sale authority granted to other System institutions by the bill.

Loss Sharing.—Subsection (3) amends section 2.1(18) of the Act to make clear that the banks may enter into agreements with other System institutions to share losses of whatever nature. The bill elsewhere makes clear that other System institutions have similar authority.

Loan Participation.—Subsection (4) amends section 2.1(20) of the Act to authorize the banks to participate in loans with other System institutions, subject to common provisions set out in Title IV of the bill. This provision complements the intra-System loan participation authority granted to other System institutions by the bill.

Section 202

Section 202 amends Section 2.2 of the Act (12 U.S.C. 2073) which pertains to bank stock.

Issuance of Stock.—Subsection (1) amends section 2.2(d) of the Act to authorize the banks to issue nonvoting stock to, and retire it for, other System institutions in connection with intra-System transactions.

Book Value.—Subsections (2) and (4) strike the word "fair", modifying the words "book value", from sections 2.2(g) and 2.2.(i) of the Act.

First Lien.—Subsection (3) amends section 2.2(h) of the Act to except, from the requirement that the banks shall have a first lien on stock and participation certificates issued by them, any stock or participation certificates held by other System institutions. For intra-System transactions, the protection afforded by a first lien is not considered necessary.

Section 203

Other Financing Institutions: Discounting Aquatic Loans.—Section 203 amends section 2.3 of the Act (12 U.S.C. 2074) which sets out the powers of the Federal intermediate credit banks to make and discount loans. It would change current law by placing certain non-System financial institutions (national banks, State banks, trust companies, agricultural credit corporations, incorporated livestock loan companies, savings institutions, credit unions, or associations of agricultural producers engaged in making loans to farmers or ranchers, and corporations engaged in making loans to producers or harvesters of aquatic products) in essentially the same position as production credit associations with respect to borrowing from and discounting commercial paper with the Federal intermediate credit banks. Thus, such other financial institutions would be authorized to discount with the banks loans made for any of the purposes for which the associations may lend, including loans for certain rural housing and loans to farm-related businesses.

This section would insure that the services of the banks would be available on a reasonable basis to such other financial institutions, provided that they (1) are significantly involved in lending for agricultural or aquatic purposes, (2) demonstrate a continuing need for supplementary sources of funds to meet the credit requirements of their agricultural or aquatic borrowers, (3) have limited access to national or regional capital markets, and (4) do not use such services to expand their financing activities to persons and for purposes other than those designated in the bill.

The Committee has adopted provisions which it believes will ensure reasonable access for other financial institutions to discount privileges and other services with the Federal intermediate credit banks. The provisions reflect the Committee's intent that such access be assured, however, only to financial institutions which can establish a continuing need therefor. While the guidelines in this regard specified in the bill are rather general in nature, the Committee intends that they be applied in a manner which will permit such institutions to avail themselves of the banks' services if they are unable to obtain, through national or regional capital markets, adequate funds to serve the needs of their agricultural or aquatic borrowers. National money markets are those generally serviced by the largest banks in the United States which operate on a national level and conduct international operations as well. Regional money markets are those generally served by intermediate size banks which do not ordinarily operate on a national level but which may trade funds among themselves and provide services to community banks.

The Committee has not adopted nor does it endorse any specific criteria in the nature of amount of assets or similar monetary measures for determining under the guidelines in the bill whether or not a financial institution shall be afforded access to the services of the banks. For example, the fact that an institution has large total resources or that it has on some occasions traded funds with other banks, are not factors which, taken alone, would presumptively disqualify it from access to a bank's services. This degree of flexibility was discussed during the Committee markup of July 31. The dialogue between Congressman English and Governor Wilkinson underscores this intent.

With respect to factors to be considered in implementing the guidelines of the bill, Mr. English asked the Governor whether a loan-to-deposit ratio of between 65 and 68 percent referred to in the Governor's letter to Mr. Jones and Mr. Madigan was a solid figure or whether it might be reduced to a figure such as 60 percent. The Governor replied that the figures he used were for illustrative purposes only and were not solid figures. Mr. English then asked whether, for any financial institution, a ratio of agricultural loans as compared with total loans of at least 15 percent was a fixed figure. The Governor responded that it was not, and that while under Farm Credit Administration regulations the percentage required currently is 25 percent, the figure could be 15 percent, but that such figure is not a solid one. Finally, Mr. English referred to figures mentioned by the Farm Credit Administration in connection with access to national and regional capital markets; the agency had suggested that an institution having less than $100 million in deposits would probably be considered eligible for access, while one having in excess of $100 million in deposits would be evaluated on a case-by-case basis The Governor responded that, for these purposes, the $100 million figure is not a solid one and that there would be an examination as to what each institution really needs on a case-by-case basis.

Because the Committee believes that it is not reasonable to expect the Federal intermediate credit banks to become the suppliers of funds to all other agricultural lenders no matter what access they may have to funds from other sources, it has included in the bill a provision that permits the affiliates and subsidiaries of a financial institution to be considered as one with that institution for purposes of these determinations. However, it is the intent of the Committee that the fact that an institution is an affiliate or subsidiary will not alone presumptively disqualify the institution from the discount privilege. This intent is reflected in the provision in the bill that if a bank denies the application of another financial institution, the Farm Credit Administration shall on a case-by-case basis review the matter "with due regard to the total relationship of the financing institution, its subsidiaries and affiliates." A case-by-case review is prescribed so that all relevant considerations, as opposed to any fixed monetary standards, will be the basis for determination as to whether a particular institution shall have access to the services of a bank.

Further, section 203 of the bill provides that nothing therein requires the termination of discount relationships which are in effect on the effective date of the legislation.

Section 203 would also equate, for bank discounting purposes, loans made to producers or harvester of aquatic products with loans made to farmers or ranchers. The banks presently may discount for other financial institutions only notes and other obligations the proceeds of which were originally advanced for agricultural purposes. The production credit associations, however, may presently make loans to aquatic producers and discount them with the banks.

Section 204

Interest Rates.—Section 204 amends section 2.4 of the Act (12 U.S.C. 2074) by authorizing the district Farm Credit boards to permit loans (other than aquatic loans) to be made by production credit associations for terms of up to ten years, as contrasted with the maximum term of seven years presently prescribed by the Act.

It also inserts a reference to a clarifying provision to be added to the Act by Title IV of the bill dealing with State interest rate limitations.

Section 205

Financially Related Services for Producers and Harvesters of Aquatic Products.—Section 205 amends section 2.5 of the Act (12 U.S.C. 2076) to authorize the banks to make available to borrowers, members, and applicants from the banks and production credit associations and to persons whose loans are discounted with a Federal intermediate credit bank by another financial institution, financially related services appropriate to aquatic operations. This provision is similar to other provisions of the bill designed to make the services of the bank equally available to producers or harvesters of aquatic products and farmers and ranchers.

Section 206

Earnings and Reserves.—Section 206 amends section 2.6(c) of the Act (12 U.S.C. 2077(c)) to permit the banks, under regulations of the Farm Credit Administration, to apply more than 25 percent of net earnings, after payment of operating expenses, to the restoration or maintenance of the allocated reserve account. Presently, under the Act, Farm Credit Administration regulations may allow application of less than, but not more than 25 percent of earnings to these purposes.

Section 207

Technical Correction.—Section 207 makes a technical correction in section 2.10 of the Act (12 U.S.C. 2091) by substituting a period for the comma after the word "States".

Section 208

Section 208 amends section 2.12 of the Act (12 U.S.C. 2093) which sets out the powers of the production credit associations.

Sale and Purchase of Loans.—Subsection (1) amends section 2.12 (11) of the Act to authorize the associations to buy from and sell to System banks interests in loans and other financial assistance extended, and nonvoting stock as may be authorized by the supervising bank under Farm Credit Administration regulations. This provision parallels the intra-System loan purchase and sale authority granted to other System institutions by the bill.

Loan Participations.—Subsection (2) amends section 2.12(13) of the Act to authorize the associations to participate in loans with other System institutions, subject to common provisions set out in Title IV of the bill. This provision likewise parallels other similar authorities contained in the bill.

Loss Sharing.—Subsection (3) amends section 2.12(15) of the Act to make clear that the associations may, if authorized by the supervising credit bank under Farm Credit Administration regulations, enter into agreements with other System institutions to share losses of whatever nature. The bill elsewhere makes clear that other System institutions have similar authority.

Section 209

Section 209 amends section 2.13 of the Act (12 U.S.C. 2094) which pertains to association stock.

Participation Certificates.—Subsection (1) amends section 2.13(e) of the Act to authorize associations to issue participation certificates in lieu of nonvoting stock.

Book Value.—Subsections (2), (4), and (6) strike the word "fair", modifying the words "book value", from sections 2.13(f), (g), and (k) of the Act.

Stock: Participation Certificates.—Subsection (3) amends section 2.13(f) of the Act to provide that, with respect to loans in which an association participates with non-System financial institutions, associations may issue nonvoting stock or participation certificates to such institutions, with respect to the portion of the loan retained by the association, in satisfaction of the requirement of the Act that the borrower acquire association stock or participation certificates. This authority will facilitate loan transactions in which associations and commercial lenders participate.

First Lien.—Subsection (5) amends section 2.13(j) of the Act to except from the requirement that the associations shall have a first lien on stock or participation certificates issued by them, any stock or participation certificates held by other System institutions. For such intra-System transactions the protection afforded by a first lien is not considered necessary.

Section 210

Section 210 amends section 2.15 of the Act (12 U.S.C. 2096) which relates to loans of the production credit associations.

Loans for Basic Processing and Marketing.—Subsection (1) amends section 2.15(a) of the Act by specifying that the credit needs of eligible borrowers which may be served by the production credit associations include basic processing and marketing directly related to the borrower's operations must provide at least 20 percent, or such larger and producers or harvesters of aquatic products. Like the similar provision relating to land bank lending, this subsection provides that the borrower's operation must provide at least 20 percent, or such larger percentage as is established by the supervising bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended.

Interest Rates.—Subsection (2) amends section 2.15(b) of the Act relating to interest rates by inserting a reference to a clarifying provision to be added to the Act by Title IV of the bill dealing with State interest rate limitations.

Secion 211

Financially Related Services for Producers or Harvesters of Aquatic Products.—Section 211 amends section 2.16 of the Act (12 U.S.C. 2097) to authorize the associations to make available to borrowers, applicants, and members financially related services appropriate to aquatic operations. This provision is similar to other provisions of the bill designed to make the services of the associations equally available to producers and harvesters of aquatic products and farmers and ranchers.

TITLE III—BANKS FOR COOPERATIVES

Section 301

Section 301 amends section 3.1 of the Act (12 U.S.C. 2122) which sets out the general corporate powers of the banks for cooperatives.

Loan Participation.—Subsection (1) amends section 3.1(11) to clarify that the banks are authorized, subject to the common provisions set out in Title IV of this bill, to participate in loans with other Farm Credit System institutions. The bill elsewhere contains similar provisions authorizing intra-System loan participations by other System institutions.

Deposit of Funds.—The banks are currently authorized to deposit securities and current funds with member banks of the Federal Reserve System. Subsection (2) expands this authority to permit a bank for cooperatives to make deposits in State banks insured under the Federal Deposit Insurance Act which are not members of the Federal Reserve System and, only to the extent necessary to facilitate export and import transactions of eligible cooperatives which may be financed under the amended section 3.7(b) of the Act, in any other financial institutions, domestic or foreign, as may be authorized by its board and approved by the Farm Credit Administration.

Investments.—The banks are currently authorized to buy and sell obligations of, or insured by, the United States or agencies thereof and to make other investments as may be authorized by the Farm Credit Administration. Subsection (3) amends section 3.1(13) of the Act by adding a provision authorizing the banks to buy from and sell to System institutions interests in loans and other financial assistance extended, and nonvoting stock. This parallels the intra-System loan purchase and sale authority granted to other System institutions by the bill.

Subsection 3 also would authorize the banks to invest in ownership interests in business entities, domestic or foreign, that are principally engaged in providing credit information to and performing servicing functions for their members in connection with the members' international transactions. Such investments could be made, however, solely for the purpose of obtaining credit information and other services needed to facilitate the export and import transactions of eligible cooperatives which may be financed under the amended section 3.7(b) of the Act.

Subsection (3) originally contained provisions authorizing the banks to buy and sell obligations such as as acceptances and other commercial paper originating in the course of transactions which may be financed by the banks. These provisions were eliminated by the Subcommittee on Conservation and Credit. This action was taken not because the Subcommittee intended to deny such authorities to the banks; rather, it was taken in recognition of the fact that the Act presently permits the banks to make such other investments as may be authorized by the Farm Credit Administration. Under this statutory provision, the Farm Credit Administration has authorized the banks to invest in, among other things, bankers acceptances. The Committee believes that this provision furnishes ample authority for the Administration to approve such investments by the banks as it may consider appropriate.

Credit Balances and Loss Sharing.—Subsection (4) amends section 3.1 of the Act to add new paragraphs (18) and (19). The new paragraph (18) authorizes the banks for cooperatives to maintain credit balances, and pay or receive fees or interest thereon only for the purpose of assisting in the transfer of funds to and from parties to transactions which may be financed under the amended section 3.7(b) of the Act. The paragraph provides that nothing therein authorizes the banks to engage in the business of accepting domestic deposits. The new paragraph (19) makes clear that the banks may enter into agreements with other System institutions to share losses of whatever nature. The bill elsewhere clarifies that other System institutions have similar authority.

Section 302

Participation Certificates.—Section 302 amends section 3.3 of the Act (12 U.S.C. 2124) by adding a new subsection (f) which authorizes the banks for cooperatives to issue participation certificates to parties to whom voting stock may not be issued. This would provide a mechanism for the capitalization of loans and other financial assistance authorized by section 304 of the bill, and the payment of patronage refunds in connection therewith.

Section 303

Section 303 amends section 3.5 of the Act (12 U.S.C. 2126) which relates to retirement of capital.

Retirement of Participation Certificates.—Subsection (1) provides that participation certificates and non-voting investment stock may be called for retirement at par.

Retirement of Voting Stock.—Currently voting stock of a bank for cooperatives may be retired at "fair book value not exceeding par" on call or on such revolving basis as may be determined by the bank board with approval of the Farm Credit Administration. Subsection (2), by deleting the phrase "fair book value not exceeding", is intended to assure that in the normal course of business stock will not be retired at less than par value.

Section 304

Section 304 amends section 3.7 of the Act (12 U.S.C. 2128) which relates to the lending powers of banks for cooperatives.

Technical and Financial Assistance.—Subsection (1) designates the current provisions of section 3.7 as a separate subsection (a) and adds "currency exchange necessary to service individual transactions which may be financed under subsection (b)" to the enumeration of technical and financial assistance which may be offered by the banks for cooperatives to eligible cooperatives. This will authorize the banks to engage in currency exchange as necessary to meet the needs of eligible cooperatives in connection with international transactions. The Committee recognizes that it may in some transactions be appropriate for the banks to furnish currency exchange services to their borrower cooperatives engaged in import-export activities. It likewise recognizes in this regard that it may be appropriate to hedge against fluctuations in the value of foreign currencies. However, in no circumstances are the banks to engage in activities which would constitute speculation in futures transactions in such currencies or the financing of such speculation. The new subsection (e) which the bill adds to section 3.7 of the Act reflects the Committee's position on this issue. In this connection, the Committee directs that the regulations of the Farm Credit Administration implementing this authority reflect the relevant definitions of hedging and speculation found in the regulations issued by the Commodities Futures Trading Commission.

Subsection (1) also authorizes the banks to lend, and make other services available to domestic parties which are not cooperative stockholders of the bank for the purpose of acquiring equipment and facilities to be leased to cooperative stockholders of the bank for use in their operations in the United States. While this provision would not authorize the banks to lend to such parties for the purpose of acquiring agricultural land, the Committee intends that, to the extent that the banks may finance facilities for such parties, the financing may include the land on which the facilities are located.

International Transactions.—Subsection (2) adds new subsections (b), (c), (d), and (e) which expand the authority of the banks to serve the needs of eligible cooperative stockholders. The new subsection (b) authorizes the banks to make or participate in loans and commitments and extend other technical or financial assistance to a foreign or domestic party (1) with respect to its transactions with a stockholder cooperative for the export or import of agricultural or aquatic commodities or farm supplies through purchases, sales, or exchanges, and (2) in which such a cooperative has at least the minimum ownership interest approved under Farm Credit Administration regulations for the purpose of facilitating the cooperative's export or import transactions described above. In either case, such loans, commitments, and assistance may be provided only if the bank determines, under regulations of the Farm Credit Administration, that the stockholder cooperative will benefit substantially therefrom.

The new subsection (c) provides that loans, commitments, and assistance to these parties will be extended in accordance with policies adopted by the bank board under regulations of the Farm Credit Administration.

The new subsection (d) provides that the Farm Credit Administration, in formulating regulations implementing the authorities of subsection (b) and the related authorities located elsewhere in this Title, closely consult on a continuing basis with the Federal Reserve Board to ensure that such regulations conform to national banking policies, objectives, and limitations.

Subsection (e) would prohibit the banks from making or participating in loans for the purpose of financing speculative futures transactions by eligible borrowers in foreign currencies.

The provision of this section empowering the banks to make their financial services available to a foreign or domestic party with respect to its transactions with a cooperative for the export or import of agricultural commodities, farm supplies, or aquatic products permits a significant departure from traditional bank for cooperatives financing in that it authorizes the financing by the banks of parties that are not cooperatives. This new authority is considered by the Committee to be necessary and appropriate to enable the banks to provide comprehensive and effective services to their stockholder-members which engage in export and import activities.

It is expected that, to the extent such services are furnished to non-cooperatives in export transactions, they will involve primarily interim financing of the foreign purchaser, a service frequently provided by commercial banks in connection with export transactions of their domestic customers. The Committee envisions that financing of a domestic non-cooperative party would be confined to very limited circumstances where such party forms an integral link in accomplishing a cooperative's export or import transaction. For example, a number of small cooperatives might find it expedient to contract with a non-cooperative marketing agency to assist in carrying out their export sales. The banks would be authorized to make interim financing available to such agency—but only with respect to the cooperatives' export transactions. The Committee intends that this new authority to finance non-cooperative entities be strictly limited to the bona fide export (or import) transactions of the banks' member cooperatives. The Committee does not intend that there be any extension of bank for cooperatives financing under this new authority to export or import transactions which are not essentially and substantially those of cooperative stockholders-members of the banks. Any arrangement in the nature of a "finders fee" system by which cooperatives would be used in order to obtain financing for non-cooperative entrepreneurial importers or exporters is not permitted under the bill.

Section 305

Section 305 amends section 3.8 of the Act (12 U.S.C. 2129) which sets out the eligibility requirements for cooperative borrowers from the banks for coperatives.

Aquatic Cooperatives.—Subsection (1) makes cooperative associations which furnish aquatic business services to their members eligible to borrow from the banks for cooperatives. This provision would make the service of the banks available to cooperatives which serve producers or harvesters of aquatic products as well as those which service farmers and ranchers.

Members Business.—Section 3.8(c) of the Act provides that, to be eligible to borrow, a cooperative association must not transact business with nonmembers in an amount greater in value than with members. Among other requirements, an association may qualify as an eligible cooperative if it furnishes "services to eligible cooperatives." However, section 3.8(c) contains no provision which authorizes the value of these services to be considered in determining whether a cooperative meets the member business requirement. By substituting the words "farm or aquatic business services, or services to eligible cooperatives" for the words "or farm business services" in section 3.8(c), subsection (2) corrects this imperfection and also reflects the change made by subsection (1) with respect to the eligibility of certain aquatic cooperatives.

Voting Control.—Currently, in order for a cooperative to be eligible to borrow from a bank for cooperatives, not less than 80 percent (70 percent in the case of rural electric, telephone, and public utility cooperatives) of its voting control, or such higher percentage as may be established by the district board, must be held by farmers, producers or harvesters of aquatic products, or eligible cooperatives. Subsection (3) lowers to 60 percent the necessary percentage in the case of rural electric, telephone, public utility and service cooperatives and local farm supply cooperatives, and their competitor cooperatives, which have served the needs of the community that could not adequately be served by others and that have experienced a reduction in their percentage of farmer membership through factors such as urbanization. A district board will continue to have the power to establish a higher percentage requirement in its district.

Section 306

Stock Ownership.—Section 306 amends section 3.9(a) of the Act (12 U.S.C. 2130) which relates to ownership of stock in the banks for cooperatives by their borrowers. Currently each borrower is required to own at least one share of voting stock at the time the loan is made and such additional amounts of voting or nonvoting investment stock, at that time, or from time to time, as the bank may determine. Under the amendment, only those borrowers "entitled to hold voting stock" must meet this requirement. This amendment reflects the new authorization in section 304 of the bill which provides for loans to be made under certain circumstances to parties which are not entitled to hold voting stock. Capitalizing loans made to such parties will be left to contractual arrangements made in connection with the loan.

Section 307

Section 307 amends section 3.10 of the Act (12 U.S.C. 2131) as it relates to interest rates and the cancellation of stock and application on indebtedness.

Interest Rates.—Subsection (1) amends section 3.10(a) relating to interest rates by inserting a reference to a clarifying provision to be added to the Act by Title IV of the bill which deals with State interest rate limitations.

Cancellation of Stock and Application on Indebtedness.—Under the present provision of section 3.10(d), in the case of default by a borrower or in the case of liquidation or dissolution of a present or former borrower, the bank for cooperatives may, but is not required to, retire and cancel all or a part of equities in the bank owned by or allocated to the borrower at "the fair book value thereof" not exceeding par. Subsection (2) will provide for such retirements at fair "market" value not exceeding par in lieu of fair "book" value. In addition, subsection (2) precludes the retirement of equities under these circumstances if the Farm Credit Administration determines that the retirement or cancellation would adversely affect the bank's capital structure. This provision will allow the banks for cooperatives the flexibility to discount equities which are to be retired or cancelled outside the normal revolving cycle but will permit such retirement or cancellation only if the bank's capital structure will not be adversely affected.

Section 308

Section 308 amends section 3.11 of the Act (12 U.S.C. 2129) which relates to earnings and the applications of net savings by the banks for cooperatives.

Earnings and Reserves.—Subsection (1) permits the banks, under regulations of the Farm Credit Administration, to apply more than 25 percent of net earnings, after payment of operating expenses, to the restoration or maintenance of the allocated surplus account. Presently, under the Act, Farm Credit Administration regulations may allow application of less than, but not more than, 25 percent of net earnings to these purposes.

Patronage Refunds.—Subsection (2) authorizes the payment of patronage refunds by banks for cooperatives in participation certificates as well as in stock or cash, as currently provided for in the Act.

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

Section 401

Finance Committee.—Section 401 amends section 4.5 of the Act (12 U.S.C. 2156) which provides for finance committees for the Farm Credit banks composed of the presidents of the respective banks. Subsection (1) provides authority for a bank president to delegate the performance of his function on the committee, and makes a technical correction in section 4.5 by substituting the word "president" for the word "presidents" in the first sentence thereof. Subsection (2) makes a technical correction in the third sentence of section 4.5 by substituting the word "subcommittees" for the word "subcommittee's".

Section 402

Technical Correction.—Section 402 makes a technical correction in section 4.10 of the Act (12 U.S.C. 2181) by substituting the word "same" for the word "name".

Section 403

Section 403 amends Title IV of the Act by adding new sections 4.17, 4.18 and 4.19 which relate, respectively, to interest rates, participation loans, and programs for young, beginning, and small farmers and ranchers.

Interest Rates.—The new section 4.17 clarifies that interest rates charged by institutions of the Farm Credit System on new or existing loans are not subject to any limitation imposed by any State constitution, statute, or other law. In this respect, this provision does not reflect any change in the law since State limitations on interest rates are not now applicable to loans made under the Act. It is included in the bill to eliminate any possible question either inside or outside the System about this issue.

In addition, this section would extend the exemption from State usury laws to loans made by those agricultural credit corporations which are organized in conjunction with cooperative associations for the purpose of financing the ordinary crop operations of the cooperative members or other producers, and eligible to discount with the Federal intermediate credit banks.

Participation Loans.—The new section 4.18 provides that loan participations among Farm Credit System institutions operating under different titles of the Act shall be upon such terms as may be agreed upon by the institutions and authorized by the Farm Credit Administration, except that eligibility, membership, term, amount, security, stock purchase, and some other loan requirements will be determined pursuant to the provisions of the Act applicable to the institution which originates the loan. The bill elsewhere provides for intra-System loan participations. This provision ensures that, while the participating institutions will be given flexibility in handling the loans involved, the general framework of the Act with respect to eligibility and other basic factors relating to services from the several System institutions will remain intact.

Young, Beginning, and Small Farmers and Ranchers.—The new section 4.19 requires that, under policies of the district board, each Federal land bank association and production credit association prepare a program for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers. The program would include coordination with other Farm Credit institutions and governmental and private sources of credit in the territory. The supervising banks would be required annually to report on activities under the program to the Farm Credit Administration which, in turn, would be required to summarize such reports in its annual report to Congress.

Section 404

Section 404 amends Title IV of the Act to add new Parts D and E relating to service organizations and sale of insurance, respectively.

PART D—SERVICE ORGANIZATIONS

Establishment.—Under current law, the district Farm Credit boards are empowered to authorize agreements between System institutions to provide for services which can most effectively be made available by joint undertakings. There is no authority, however, for the institutions to organize corporations to perform those functions which may be more efficiently performed through such legal entity. The new section 4.25 authorizes the banks of the System, either individually or in concert with other System banks, to organize service corporations. These corporations may be empowered to perform for the organizing bank or banks functions or services which the banks themselves are authorized to perform, other than the extension of credit and providing insurance services for borrowers.

Applications for Federal charters for such corporations will be made to the Governor of the Farm Credit Administration who may for good cause deny a charter. Upon the approval of the Articles of Incorporation and the issuance of a charter by the Governor, the corporation will become a federally chartered corporate body and an instrumentality of the United States. This section provides that a corporation so chartered shall have no greater authority, with respect to the functions or services it performs, than the organizing bank or banks possess under the Act.

Power of Governor with Respect to Service Corporations.—Under the new section 4.26, the Governor will have the power to provide for the organization of any service corporation chartered under section 4.25, to prescribe the territory within which it may transact business, and to direct such changes in the charter as he finds necessary to accomplish the purposes of the Act. These powers are similar to those which the Governor is given elsewhere in the Act with respect to the Farm Credit banks and associations. They specifically include the power to approve the corporate title, general corporate powers, composition and compensation of boards of directors, sources of operating funds, dissolution, liquidation, distribution of assets, and applications of earnings.

Supervision and Examination.—The new section 4.27 provides that any service corporation organized under this part will be an institution of the Farm Credit System and will be subject to the same supervision and examination by the Farm Credit Administration as the banks which may organize it.

State Laws.—The new section 4.28 provides that State and other laws shall apply to the corporations organized under this part to the same extent they would apply to the organizing banks, except that, to the extent that the Act now exempts the banks from taxation, that exemption (other than with respect to franchise taxes) shall not extend to such corporations.

PART E—SALE OF INSURANCE

A new Part E entitled "Sale of Insurance" would be added under Title IV. Within that new Part E, a new section 4.29 would clearly establish those lines of insurance which may be offered by institutions of the Farm Credit System under regulations of the Farm Credit Administration.

Sections 1.11, 1.15(15), 2.5, and 2.16 of the Act authorize Federal land banks, Federal land bank associations, Federal intermediate credit banks, and production credit associations to make available to borrowers, applicants, and members, at their option, such financially related services appropriate to their operations as is determined feasible under regulations of the Farm Credit Administration.

Credit or Term Life and Disability Insurance.—Under that general authority to offer financially related services, a new subsection 4.29(a) would provide Federal land banks, Federal land bank associations, Federal intermediate credit banks, and production credit associations with specific authority to sell to members, on an optional basis, credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtor(s).

For the Farm Credit System institutions to sell credit or term life insurance, there must be a debtor-creditor relationship and the amount of insurance should be appropriate to protect but not exceed the total loan commitment to the member-borrower.

Most insurance carriers currently writing insurance for Farm Credit System institutions have programs under which they write term insurance for the difference between the maximum amount of group credit life insurance, which may vary by State, and the amount of coverage desired by the member, but not in excess of the total loan commitment. This is considered permissible under the authorities in this Act, provided the insurance sold continues to be related to the loan commitment.

Other Insurance to Protect the Farm or Aquatic Unit.—The new section would also authorize the sale of other insurance necessary to protect the member's farm or aquatic unit, but limited to hail and multiple-peril crop insurance, title insurance, and insurance to protect the facilities and equipment of aquatic borrowers. Only the specifically designated lines of insurance may be offered by the System institutions.

Regulatory Requirements on Insurance.—Under a new subsection 4.29(b) of the Act, regulations of the Farm Credit Administration would prescribe that, in any case in which insurance is required as a condition for a loan or other financial assistance from a bank or association, notice be given that it is not necessary for the borrower to purchase the insurance from the bank or association and that the borrower has the option of obtaining the insurance elsewhere.

Regulations would also require that the bank or association have the capacity to render the insurance service in an effective and efficient manner; that there exists the probability that insurance programs to be undertaken will generate sufficient revenue to cover all costs of the programs; and that rendering the service will not have an adverse effect on the credit or other operations of the bank or association.

Regulations would prohibit banks or associations from directly or indirectly discriminating in any manner against any agent, broker, or insurer that is not affiliated with such bank or association, or against any party who purchases insurance through any such nonaffiliated insurance agent, broker, or insurer.

Phase-Out of Existing Programs No Longer Authorized.—A new subsection 4.29(c) of the Act would provide for a phase-out of insurance services not authorized under the new section. Any bank or association which, on the date of enactment of these amendments, is offering insurance coverages no longer authorized, could continue to sell such coverages for not more than one year from the date of enactment and could continue to service such coverages until their expiration.

Under the bill, the banks could not form corporations to extend credit nor could the banks or such corporations directly or indirectly underwrite insurance programs for borrowers. The banks would be free to prescribe reasonable standards to be met by private insurers and by insurance progams to be offered by System institutions to ensure compliance with the requirements of the Act. The Committee expects the banks to approve at least two insurers and two programs in each district so as to provide the associations a choice in such matters. The associations would be free to choose from among two or more approved insurers and insurance programs. The banks may, only by agreement with an insurer, offer services traditionally furnished by insurers to the Farm Credit System. Further, the banks are not to underwrite insurance applications, adjust claim payments or settlements, or train and school or service adjustors or insurance agents.

The banks are expected to supervise the manner in which the production credit associations offer insurance programs approved by the banks, without coercion or suasion from any bank in favor of any agent or insurer. However, the banks may provide to the production credit associations comparative information regarding cost and quality of the approved insurance programs and the financial condition of approved insurance companise. Bank supervision shall ensure that insurance services offered by approved insurers through production credit associations are consistent with the intent of the Act.

TITLE V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

Section 501

Virgin Islands.—Section 501 would amend section 5.0 of the Act (12 U.S.C. 2221) relating to creation of Farm Credit districts to permit the inclusion of the Virgin Islands in one of the Farm Credit districts if authorized by the Federal Farm Credit Board. However, the extension in the Virgin Islands of credit and other services from institutions of the Farm Credit System would be undertaken only if determined feasible pursuant to regulations of the Farm Credit Administration.

Section 502

District Board Candidates.—Section 502 amends section 5.2 of the Act (12 U.S.C. 2223) to reduce the required number of candidates for election to a district Farm Credit board from the three nominees who receive the highest number of votes in the nomination poll to two such nominees. This will assure that district directors will be elected by a majority vote.

Section 503

Federal Farm Credit Board Compensation.—Section 503 amends section 5.8(h) of the Act (12 U.S.C. 2242) to fix the compensation for members of the Federal Farm Credit Board for each day or part thereof in the performance of official duties at a rate equal to the daily equivalent of the rate prescribed for a GS–18 Federal employee. Members now receive compensation at the rate of $100 per day. The per diem rate of $100 was established in 1966 and was then roughly equivalent to the daily rate of compensation of a GS–18. The increase in compensation reflects the increase in the rate of compensation at the GS–18 level since that time.

Section 504

Procurement and Disposition of Property.—Section 504 amends section 5.15 of the Act (12 U.S.C. 2249) to provide that the Farm Credit Administration may dispose of property acquired under the authority of that section. Such property is paid for with funds made available to the Farm Credit Administration by way of assessments collected from the Farm Credit institutions. Therefore, section 504 also provides that any amounts received from the disposition of such property shall be deposited in the special fund provided for in section 5.16(b) of the Act (12 U.S.C. 2250), and will be available to the Farm Credit Administration for administrative expenses and salaries in the same manner as funds collected under section 5.16(a) of the Act (12 U.S.C. 2250).

Section 505

Disposition of Property.—Section 505 amends section 5.17 of the Act (12 U.S.C. 2251) to provide for the disposition of property the acquisition of which by the Farm Credit System banks is already provided for by section 5.17. It also makes clear that the Farm Credit Administration may act on behalf of the System banks in matters under section 5.17 involving Farm Credit Administration quarters.

Section 506

Farm Credit Administration Annual Report.—Section 506 amends section 5.18 of the Act (12 U.S.C. 2252) to require that there be included, in the annual report of the Farm Credit Administration to Congress, a summary and analysis of the reports of System banks on programs for serving young, beginning, and small farmers and ranchers.

The Committee is concerned that many young, small, and beginning farmers find the increasing capital requirements of agriculture to be a barrier to entering or remaining in farming. The Committee believes that Farm Credit System institutions and all lenders should make special efforts to ensure that their lending policies and programs are designed to meet the unique credit needs of these agricultural producers. The Committee directs the Farm Credit Administration to include in its annual report to Congress statistical information on the extent to which System institutions serve young, beginning, and small farmers. The annual report shall include statistics on the characteristics of these borrowers by categories of their net worth, e.g., as follows (in thousands of dollars): 0–25, 26–75, 76–150, 151–250, 251–375, 376–500, 501–1,000, and 1,001 and above. Statistics should also be provided on, but not be limited to, the following items:

(1) the number of borrowers and the number of loans made;

(2) their average age and the number of years engaged in operating a farm;

(3) the average value of their farm assets;

(4) the average debt-to-asset ratio;

(5) the average value of the farm and ranchland they own;

(6) their average farm and non-farm income;

(7) the average amounts of loans made to them;

(8) the rate of their loan default;

(9) the total amount of losses on their loans suffered by lender; and

(10) their type of organization (single proprietorship, partnership, or corporation).

The Committee acknowledges the practical difficulties that may be encountered by production credit associations and Federal intermediate credit banks in collecting this information. A reasonable amount of time will be allowed to ensure that accurate and reliable reports will be provided. Therefore, statistics of the type identified above are to be collected during the calendar year 1982 and reported to Congress in calendar year 1983. Since Federal land banks currently have the capacity to provide this information, reports on the lending operations of these institutions will be made in 1981.

The Committee also has a special concern about Farm Credit System institution financing of the processing and marketing activities of farmers. Therefore, the Committee directs the Farm Credit Administration to provide in its annual report to Congress information on farmers who have obtained loans for processing and marketing pursuant to the amended sections 1.10 and 2.15 of the Farm Credit Act of 1971. The statistics provided will cover, but will not be limited to, the size of the farm operation in terms of gross farm receipts, and degree of borrower commodity specialization in the farming operation, the commodities to be processed or marketed, the use of production-processing contracts, and the percentage of the total processing or marketing supplied by the borrower's operations.

Section 507

Legislative Oversight.—H.R. 7548 changes significantly certain authorities of the Federal intermediate credit banks and the banks for cooperatives. The former banks are given broader authority to lend to and discount paper for other financial institutions (OFIs) which, in turn, are afforded broader access to the bank's services. The banks for cooperatives are authorized to lend to certain domestic and foreign entities which are not cooperatives in connection with import and export transactions with cooperatives. The Committee believes that these new powers will enhance the well-being of American farmers and fishermen and their cooperatives. However, the Committee wishes to be kept fully apprised of the manner in which the Farm Credit Administration proposes to implement these powers, and to have the opportunity to disapprove the implementing regulations. To this end, the Committee has included language in section 507 of the bill which would subject the regulations implementing the OFI provisions to a two House Congressional veto, and would do likewise with respect to the regulations implementing the international transactions provisions if the Farm Credit Administration and the Board of Governors of the Federal Reserve System have any unresolved differences as to whether the regulations conform to national banking policies, objectives, and limitations. The Committee further provided that all Farm Credit Administration regulations, proposed or final (other than emergency regulations), shall be submitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry prior to publication.

Section 508

General Accounting Office Audit: Report.—Section 508 adds a new section 5.30 to the Act which directs the Comptroller General to conduct an evaluation of the programs and authorities authorized by the bill. It requires an interim report to the Congress no later than December 31, 1982, and a final report no later than December 31, 1984. For purposes of conducting the evaluation, the section also affords the Comptroller General access to books, records, and documents in possession of the Farm Credit System institutions.

Section 509

Farm Credit Administration Headquarters.—Section 509 amends current law (12 U.S.C. 1141(b)) which requires that the principal office of the Farm Credit Administration be located in the District of Columbia. The amendment would permit such office to be located within the District of Columbia or the Washington metropolitan area.

COMMITTEE CONSIDERATION

A. HEARINGS

H.R. 4782, the Farm Credit Act Amendments of 1979, was introduced by Representative Ed Jones, Chairman of the Subcommittee on Conservation and Credit, on July 13, 1979.

The bill as introduced would—

(1) Permit Federal land banks to make loans for more than 85 percent of the appraised value of farm real estate when these loans are guaranteed by a Federal agency, such as Farmers Home Administration, or by a State government;

(2) Require that 60 percent or more of the voting control of cooperatives borrowing from banks for cooperatives be held by farmers, ranchers, fishermen, or other eligible cooperatives (the minimum percentage currently is 80 percent, except that for rural electric, telephone, and utility cooperatives, the minimum is 70 percent);

(3) Broaden the authority of the Federal land banks and production credit associations to finance processing and marketing directly related to the farming, ranching, or aquatic operations of eligible applicants and other bona fide producers (district boards would set limits on this authority, subject to Farm Credit Administration approval);

(4) Authorize banks for cooperatives to finance agricultural export transactions that benefit U.S. cooperatives. Banks for cooperatives would be able to offer exporting cooperatives the financial services necessary to expand international trade. Banks for cooperatives would be permitted to make deposits in foreign banks, receive and hold credit balances from banks and borrowers, buy and sell bankers acceptances, buy time drafts payable by foreign buyers of farm products, take part in currency exchange, and make loans to facilitate transactions of borrowing cooperatives, including leverage lease transactions;

(5) Expand aquatic financing by the Farm Credit System by allowing Federal land banks to make long-term loans to producers and harvesters of aquatic products, clarifying that cooperatives solely engaged in furnishing aquatic business services are eligible to borrow from banks for cooperatives, and permitting Federal intermediate credit banks to discount aquatic loans of other financial institutions;

(6) Permit Farm Credit System institutions to invest and participate in the loans of other System institutions, and permit Federal land banks to participate in the loans of lenders outside the System;

(7) Permit production credit associations to issue participation certificates to commercial banks and other lenders. This would streamline a program under which production credit associations participate in farm loans originated by commercial banks and other lenders;

(8) Authorize Farm Credit System institutions to enter into loss-sharing agreements with other System institutions;

(9) Authorize Federal land banks and Federal land bank associations to pay patronage refunds;

(10) Increase the compensation of members of the Federal Farm Credit Board; permit the Federal Farm Credit Board to set salaries, within limits, for the Governor and Deputy Governors of the Farm Credit Administration; allow the Farm Credit Administration to

determine salaries below the Deputy Governor level, establish certain employee qualification and salary scale requirements, and issue travel, and property procurement and disposition regulations without regard to Federal law governing such matters; and make it easier for employees to move from farm credit banks and associations to the Farm Credit Administration by providing for transfer of sick and annual leave and retirement benefits;

(11) Authorize the Farm Credit Administration to charter corporations to perform service and finance functions for the System institutions;

(12) Clarify that lending by Farm Credit System institutions is exempt from State usury laws; and

(13) Establish that no State may impose its truth-in-lending requirements on Farm Credit System institutions with respect to transactions to which the Federal Truth in Lending Act no longer applies.

The Subcommittee on Conservation and Credit held extensive public hearings on H.R. 4782. During the months of October and November 1979, field hearings were held in Hutchinson, Kansas; Aberdeen, South Dakota: Memphis, Tennessee; Spokane, Washington; and Champaign, Illinois. On March 5 and 6, 1980, the Subcommittee held public hearings in Washington, D.C. During the hearings process, the Subcommittee heard the testimony of over 200 witnesses and received written statements from over 150 interested individuals and organizations.

Many representatives of the Farm Credit System (System), and the Farm Credit Administration (FCA), including the Governor of FCA and the President of the Central Bank for Cooperatives (CBC), appeared before the Subcommittee to express their support for the amendments. The Governor stated that the bill had the unanimous support of the Federal Farm Credit Board and had been endorsed by every district Farm Credit Board as well as the board of the CBC. Representatives of the National Association of Farmer Cooperatives and the National Milk Producers Federation also expressed total support for the bill. Many witnesses, while generally supporting the System, expressed reservations in regard to particular sections of the bill. These witnesses included representatives of the American Farm Bureau, the National Grange, the American Bankers Association, as well as representatives of individual financial institutions, and the Independent Insurance Agents. The concerns of witnesses who expressed less than total support for the bill were primarily directed at the provisions of the bill which—

1. Reduce the 80 percent farmer control requirement of cooperatives in order to be eligible for participation in the System.
2. Delete the restriction that land bank loans may not exceed 85 percent of the appraised value of the real estate security, when the loan is secured by a guarantee.
3. Expand the authority of the Federal land banks (FLBs) and production credit association (PCAs) to make loans for processing and marketing activities.
4. Authorize banks for cooperatives (BCs) to become involved in financing exports.
5. Authorize the incorporation of System service entities.

Cooperative eligibility

The Governor of the FCA explained the provisions of current law with regard to eligibility requirements for cooperatives which desire financing from the BC. He stated that presently rural electric and utility cooperatives are required to have at least 70 percent of their voting stock owned by farmers while supply and marketing cooperatives must have at least 80 percent of their voting stock owned by farmers in order to qualify for financing through the BC. The witness pointed out that due to the major demographic changes occurring in rural America, many non-farmers can be found in rural areas of the country. A representative of the National Rural Electric Cooperative Association stated that the migration of city people to rural areas is demonstrated by statistics indicating that from 1970 to 1975 the population of rural areas increased by 2.3 million, while the number of farmers over the last several decades has decreased substantially. As a result of these trends, the witness stated, an increasing number of cooperative members are non-farmers. The Governor also stated that due to State regulations which require utility cooperatives to serve everyone located in their territory and the "area coverage rule", utility cooperatives cannot restrict the membership to agricultural producers and, under present law, face loss of eligibility for System financing when over 30 percent of voting membership consists of non-farmers.

Many witnesses agreed with the National Rural Electric Cooperative Association's statement that the credit needs of rural electrification programs are expanding. The witness representing the Association stated that they estimate that in the decade of the 80's, $75 billion will be required to build generating capacity and heavy up distribution lines in order to meet the growing demand for electricity on the part of millions of rural residents. The witnesses agreed that eligibility for financing through the BCs was an important aspect of meeting these needs and supported a reduction in the "percentage of farmer control" requirement. The Governor pointed out that these same demographic factors are affecting supply and marketing cooperatives. The witness, along with a representative of the National Council of Farmer Cooperatives, urged the Subcommittee to lower the percentage requirement for supply and marketing cooperatives, as well as utility cooperatives, noting that 60 percent farmer control will maintain the long-cherished principle of farmer control of their cooperatives. Several representatives of farm groups expressed concern that a reduction in the eligibility requirements could result in the influence of farmers and ranchers in their cooperatives being jeopardized.

A representative of the Bankers Committee for Tax Equity opposed this provision of the bill stating that lowering the farmer-member control eligibility requirement would accommodate a great expansion in BC lending and stimulate a further growth of cooperative firms. He stated that the BC's, due to their favorable tax treatment, have a reduced cost of capital and, consequently, compete very effectively with private institutions. He stated that the policy of promoting growth of cooperatives has gone too far, and is detrimental to the vitality of private business.

Expansion of the 85-percent lending limitation

The Governor of the FCA stated that the provision of the bill allowing the FLBs to loan in excess of 85 percent of the appraised value of the real estate security when the loan is subject to governmental guarantee is designed to enable young and low equity farmers to secure financing. He explained that in the past this class of borrowers could obtain financing through the FLBs in cooperation with the Farmers Home Administration's (FmHA) joint and subordinate loan program. However, he pointed out that as a result of the Agriculture Credit Act of 1978, the FmHA loan program has shifted from direct loans to guaranteed loans and, consequently, an applicant for FLB financing must provide an amount equal to 20 to 25 percent of the value of his farm (15 percent plus an additional 5 to 10 percent to invest in stock of the FLB association). The witness stated that the net effect of the FLB down payment and stock purchase requirements, and the lack of direct loans through FmHA is that many young and low equity farmers are unable to obtain adequate financing. The Governor supported the provision of the bill which would permit the FLB to waive the 85 percent limitation when it was demonstrated that due to other credit factors a waiver was warranted. He further stated that the FLBs have demonstrated their ability to accurately appraise loan security as reflected in their enviable loss record of .004 of the amount loaned.

The representative of the American Bankers Association recommended that very tight limitations be placed on FLB authority to loan in excess of 85 percent of the real estate security, stating that abuse of such authority could result in excessive extensions of credit causing long-term cash flow problems for borrowers and would contribute to inflationary pressures on land prices. A witness for the Center for Rural Affairs expressed his concern that the FCA, through its very broad definition of farmer, serves corporate farms and investors rather than young struggling farmers. Another witness pointed out that a waiver of the 85 percent limitation would occur only when the loan was guaranteed by a governmental agency and that such guarantees are subject to credit elsewhere tests which ensure that the program was limited to young and low equity farmers.

Expansion of authority to finance processing and marketing activities of bona fide farmers, ranchers, and aquatic producers

The Governor of the FCA explained that under current regulations, the PCAs may finance the processing and marketing activities of a bona fide farmer so long as the applicant provides more than 50 percent of the throughput processed or marketed. He stated that the bill, by removing the 50 percent throughput requirement, would allow the System to assist more farmers in expanding their operations and increasing their incomes. The witness pointed out that according to a 1974 Agricultural Census more than 40 percent of farmers receive income from performing some type of custom service for other farmers. He stated that involvement in processing and marketing by the farmer is a desirable activity and is an effective means of increasing farm income.

A representative of the National Cattlemen's Association supported the Governor's view, stating that cattlemen are finding it increasingly necessary to integrate their operations through involvement in processing and marketing. The National Cattlemen's Association strongly supported the expansion of processing and marketing loans which are directly related to the farm/ranch operation.

The National Council of Farmer Cooperatives also supported expansion of the System's loan ability in this area. The witness addressed concerns raised by other witnesses on this issue, stating that the FCA has assured them that this provision will not create a new class of borrowers or cause undue competition in areas presently served by cooperatives.

Several family farmers appearing before the Subcommittee testified in support of the proposal. It was pointed out that the family farmer, by circumventing a few links in the food chain through involvement in processing and marketing, could realize better returns while keeping consumer food costs low. One farmer stated that this provision of the bill would enable a farmer to secure financing to process and market not only his own crop but his neighbor's as well, resulting in a greater share of the return from his farm production.

Representatives from the American Bankers Association and the National Grange opposed reduction in the throughput requirement. Both witnesses indicated that the processing and marketing credit needs of farmers are presently being met.

A commercial fisherman appeared before the Subcommittee to express his strong support for the FCA lending programs as related to the U.S. fisheries. He stated that recent developments, including the preferential status of U.S. fishermen in the 200 mile fisheries conservation zone, could result ultimately in the United States becoming a net exporter of fish products. Expansion in the industry, he pointed out, is directly correlated to the availability of credit and the System involvement in aquatic financing. A witness from the FCA stated that successful utilization of the available sea resources requires greater capital investment.

Export financing

The Governor of the FCA stated that under current law the BCs are not authorized to finance international trade. He explained that presently international transactions are normally financed through the seller's bank and that since BCs do not have authority in the area, producer members of cooperatives must finance their international sales through other financial institutions. He further stated that members of the cooperatives have invested millions of dollars in order to provide their own cooperative institution the means to service their credit needs. He pointed out that cooperatives are becoming interested in meeting their needs through financing export transactions. He indicated that in order to effectively meet these needs, the BCs need authority to—

1. make deposits in foreign branches of U.S. banks and foreign banks;
2. receive and hold credit balances from banks and borrowers;
3. provide bankers acceptances financing to borrowers and foreign buyers of U.S. exports sold by cooperatives;

4. engage in currency exchange;

5. invest in foreign financial servicing corporations where it is beneficial to cooperative borrowers; and

6. extend financing to parties associated with cooperatives where a member cooperative will benefit substantially.

He stated that the proposed authorities are designed to enable BCs to help U.S. farmer cooperatives in marketing their products abroad. He further stated that following a thorough analysis of the proposals and consultation with numerous organizations involved in agricultural exports, the FCA has concluded that H.R. 4872 would improve farm income and would not pose unreasonable risks to the BCs.

Other witnesses pointed out that for many farmers, the most efficient and profitable way to market farm products overseas is through their agricultural cooperatives. Regional export organizations owned by local cooperatives are the simplest, most direct means to get export sales profits back to the farmer, and deliver the quality of goods demanded by foreign buyers.

The President of the Central Bank for Cooperatives presented the Subcommittee with the results of a survey of more than 5,000 directors of local cooperatives indicating that the number one priority for allocation of resources was grain exporting. He stated that the survey indicated farmers desired to take a more active, direct role in selling their products to foreign buyers. The witness further stated that a prime objective of the BCs should be to foster the expansion of agricultural exports and help return to the American farmer his fair share of the economic benefits of the food and fiber he produces so successfully for world markets. The witness further indicated that the authorities in the bill are the same general authorities presently utilized by commercial banks in providing international banking services to their customers.

The representative of the National Grange testified in favor of extending export financing authority. However, he urged the Subcommittee to give careful consideration to the impact of this change on the System and the availability of funds to meet the credit production needs of agriculture before granting the new authority for export financing. Duing questioning, Mr. Huckaby expressed concern that by allowing the BCs to become involved in export financing, the amount of money available for the more traditional needs of the small farmer would be significantly reduced. The Governor responded by stating that the number one priority of the System is and will continue to be the production needs of the American farmer and rancher.

A representative of a large agriculture cooperative stated that allowing BCs to finance export transactions for their members would enable the members to enter the export market, helping to stabilize domestic prices. He pointed out that the inflationary spiral of production costs leaves farmers with only two choices—either increase production or obtain a larger share of the consumers' expenditure for food and fiber. He further stated that cooperatives handle 44 percent of U.S. grain at the point of first sale, but handle less than 10 percent at the export sale level. Members want to increase the cooperative market share. The witness also stated that the Farm Credit Act of

1971 makes specific reference to the need to continue to update credit and other services of the System in order to meet the changing needs of agriculture and agricultural cooperatives. Cooperatives are moving into world trade to a greater extent each year. Effective banking services and sound financial transactions are a crucial part of profitable international trade.

The representative of the National Council of Farmer Cooperatives strongly supported export authority for the BCs. He stated that the American farmer should do more of the exporting himself, retaining title to his grain and other agricultural exports longer and gaining a greater dollar return on his commodities.

The Farm Bureau witness recommended that the export financing authority should be modified to exclude authority for the BCs to serve as monetary exchange agents, to invest in foreign financial institutions or servicing operations related to export trade and to directly finance equity investors. He stated that these activities would unnecessarily increase the risks of the System without materially enhancing the capability of U.S. cooperatives to expand exports.

The representative of the American Bankers Association stated that transactions described under this proposal can be handled efficiently and effectively by U.S. money centers and regional commercial banks. He indicated that the commercial banking system, including domestic U.S. banks and their domestic and foreign correspondents, have had no problem in handling the needs of commodity buyers and sellers and that the present export credit system has fully supported the rapid increase in farm commodity exports from $8 billion to $32 billion since 1971.

Several representatives of district BCs indicated that there are many small cooperatives interested in entering the export market and that due to their locations and types of clientele, commercial bank services are not readily available. The witnesses stated that the BCs attempt to connect the members with regular banks but that through the authorities proposed by the bill the BCs would be capable of providing a much more effective service.

The representative of the American Bankers Association specifically objected to the provision of the bill which, he stated, would permit the BCs to make investments in foreign entities that are involved in trading transactions with U.S. cooperatives. He indicated that currently U.S. commercial banks have only a very limited authority to make investments in non-bank owned entities. He stated that this bill, by allowing BCs to engage in such investments, is yet another example of the unfair competitive advantage being provided to the System and recommended that these provisions be stricken from the bill.

Incorporation of Farm Credit System service entities

A provision of the bill which the Governor of the FCA referred to as a "housekeeping proposal" generated controversy among many witnesses. The Governor stated that the proposal would simply enable the FCA to charter corporations to perform activities now performed by unincorporated entities. The major concern of opponents of this provision was that the System would form corporations to sell insurance. The Governor stated that the bill would not authorize the establishment or incorporation of an underwriting insurance company to insure System borrowers.

Witnesses testifying in opposition to the provision included representatives of the American Bankers Association, the National Association of Mutual Insurance Companies, the Professional Insurance Agents and the Independent Insurance Agents of America. Some of these witnesses stated the provisions could be interpreted to mean the System could own and operate non-farm businesses. They stated such a result would be an unwarranted encroachment into the private sector by corporations benefiting from special ties to the Federal Government. The representative of the National Grange also opposed the provision unless language is included prohibiting the System from acting as insurance agents for the sale of casualty and property insurance and unless adequate insurance from a private company is not available in the locality. Many witnesses stated that of the System, with its special privileges such as favorable tax treatment and ready availability of funds, enjoys an unfair advantage in competing with the private sector in the insurance business. Several witnesses also stated System clients may feel coerced into purchasing insurance through the System rather than from a non-affiliated company, believing purchase of a System policy is a prerequisite to a loan. Another witness stated the System has a built in competitive advantage because of its power to extend credit, access to insurance expiration information, tax advantages, and lower loan interest rates.

Witnesses testifying in support of the provision suggested that the System's entry into insurance sales has resulted in private carriers being more cognizant of their reponsibilities and in improved service to all segments of the agricultural community. One witness stated that in many cases the PCAs have offered either the same coverage for a lower rate or greater coverage for the same rate as the private companies. Another argument advanced in support of the provision was that there are special considerations surrounding farm insurance and the PCA have a thorough understanding of the farmers' special concerns. The Vice President of Old Republic Life Insurance Co. expressed support for this provision of the bill and defended the System's involvement in collateral insurance as pro-competitive. He stated that the FCA involvement resulted in benefits similar to those experienced with the Farm Bureau, National Grange, and Farmers Union involvement, namely, better service at competitive prices. The representative of the National Association of Wheat Growers expressed strong support for System involvement in insurance and credit related services.

Loan participation

The Governor expressed support for the provisions of the bill aimed at inceasing cooperation between System institutions and commercial banks. The witness stated that the FCA has long maintained that in order to meet the expanded credit needs of farmers, the combined efforts of all agricultural lenders will be required. He stated that the bill would provide the FLBs with the authority to participate with other lenders in making credit available to farmers and would revise and streamline the process by which PCAs currently participate with non-system lenders in extending credit.

Exemption from State usury laws

The need for the provisions of the bill clarifying the status of the System in relation to State usury laws was addressed by several representatives of the System. A representative of the Federal intermediate credit bank (FICB) of St. Louis, in an effort to demonstrate the need for the State usury law exemption, first explained the calculations of PCA interest rates. The interest rates charged the PCA is a function of the average rate of interest on FICB outstanding bonds for the coming month, plus a fraction of a percent, approved by the FCA, to pay for the cost of operation. Each PCA adds to the rate it pays a differential to cover its expense for cost of money, operating expenses, and necessary reserves and surplus.

He further explained that, generally, the FLBs and PCAs can only lend to eligible borrowers for specific limited purposes. A PCA or FLB which is restricted by the State usury laws of its home jurisdiction cannot invest its funds in a more permissive jurisdiction at a higher rate. Consequently, the FLB and PCA may have to "buy" money at a higher rate than they can "sell" the money for, resulting in their failure to operate in a self-sustaining manner.

Several witnesses related to the Subcommittee how usury laws can jeopardize the extension of farm credit. Representative John Hammerschmidt from the State of Arkansas explained that Arkansas law limits the interest that may be charged for credit to 10 percent per annum and requires forfeiture of both interest and principal if the ceiling is exceeded. He further stated that such unreasonable restraints are counterproductive and urged the Members to clarify that System institutions are exempt from State imposed interest rate limitations. Another witness pointed out that seekers of credit in Arkansas have suffered due to that State's usury law, indicating that during the last week of February 1980, System issues were sold at a net cost to the banks of 15.4 percent while under State law the maximum rate lenders may charge is 10 percent. He further stated that the Arkansas System institutions have over $1 billion of loans outstanding and under State law they might risk a total loss of those funds if they charged in excess of 10 percent.

Several witnesses representing private banking interests recommended that if banks of the System are to be exempt from State usury laws, in the name of equity, other financial institutions and commercial banks should also be exempt.

Other considerations

A recommendation to amend the Act to authorize Farm Credit boards to extend the maximum repayment time period for PCA loans from seven to ten years was presented by one witness. The witness pointed out that farmers are presently finding it necessary to invest in large capital outlays in order to survive. He stated this is in part due to inflation, but also due to the recent trend to consolidate smaller farms into more efficient commercial farm operations and to intensify and modernize operations. He further indicated that returns on these investments often are not realized for several years. The witness concluded that in order to more effectively serve the needs of the agricultural sector, the Farm Credit boards should be allowed to extend the term of PCA loans up to ten years.

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Several witnesses expressed support for the provisions of the bill dealing with the internal operations of the FCA. The provisions authorize the FCB to set salaries of the Governor and Deputy Governors within the maximum limits of the executive pay schedule and allow for changes in per diem allowances and retirement benefits. It was stated by one witness that the discrepancy between the pay and benefit levels of FCA officials and the senior officers of the banks under their supervision has limited the FCA ability to attract and retain competent, well-trained employees. The witness pointed out that the Governor and Deputy Governors who have left FCA are now earning an average of $32,900 more than the current FCA salary they would have received if they had remained at FCA. He stated that the salary structure of FCA, as limited by the Farm Credit Act of 1971, has created an economic incentive for an outflow of senior FCA employees to System associates and banks or to private business. The witness concluded that a key to meeting the future challenges facing the FCA is the ability to attract, develop, and retain employees who have the ability to make increasingly complex decisions. He pointed out that the Farm Credit Administration operates at no cost to the government or the taxpayers as all costs are borne by the banks and associations of the Farm Credit System.

The witness for the American Bankers Association urged that the Act should be amended to require that the Federal intermediate credit banks make their financial services available to production credit associations and other financial institutions on an equal basis. He stated that such institutions are finding it difficult to obtain access to the discount services of the banks, and that such institutions were becoming a more distant "step child" of the Farm Credit System.

B. SUBCOMMITTEE MARKUP

The Subcommittee on Conservation and Credit met on June 26 and July 22, 1980, to consider H.R. 7548, a bill to amend the Farm Credit Act of 1971 to permit System institutions to improve their services to borrowers, and for other purposes. The bill as introduced by Mr. Jones, Chairman of the Subcommittee, and Mr. Madigan, the Ranking Minority Member, would—

Authorize the Federal land banks to make loans in excess of 85 percent, but not in excess of 100 percent, of the appraised value of the real estate security if the loans are guaranteed by Federal, State, or other governmental agencies.

Reduce from 80 percent (70 percent in the case of rural utility cooperatives) to 60 percent the minimum voting control of a cooperative that must be held by farmers in order for the cooperative to be eligible for loans through banks for cooperatives.

Authorize the Federal land banks and production credit associations to make loans to finance basic processing and marketing operations so long as the applicant's operation supplies at least 20 percent of the commodity processed or marketed.

Authorize the banks for cooperatives to finance export transactions so long as they do not engage in activities which other commercial lenders are prohibited from engaging in.

Expand the authority of credit banks to discount paper for other financial institutions and ensure access by such institutions to the financing services of banks.

Authorize the Federal land banks to make real estate mortgage loans to producers or harvesters of aquatic products under conditions similar to those currently extended to farmers.

Authorize the System banks and production credit associations to participate in loans with, and invest in loans of other System institutions, and authorize the land banks to participate in loans with lending institutions outside the System.

Authorize any System institution to enter into general loss-sharing agreements with other System institutions.

Authorize Federal land banks and associations to pay patronage refunds.

Authorize the district Farm Credit boards to extend from seven to ten years the maximum term for non-aquatic loans from production credit associations.

Authorize the Farm Credit institutions to extend credit and other services to persons in the Virgin Islands of the United States.

Require district Farm Credit boards to adopt policies respecting programs for providing credit and related services to young, beginning, and small farmers.

Authorize Farm Credit System banks to organize corporations to perform functions (other than the extension of credit or the provision of insurance services for borrowers) that the banks are authorized to perform under the Farm Credit Act of 1971.

Restrict the authority of Farm Credit institutions to offer insurance by specifying the types of insurance which may be made available to System banks.

Clarify the authority of Farm Credit System institutions to set interest rates without limitation by State law.

Authorize various changes relating to the management and operation of the Farm Credit Administration, including adjustments to board members' daily rate of pay, salaries of the Governor and Deputy Governor, retirement programs, and the location of the Farm Credit Administration headquarters.

Make several technical changes to the Act.

At the initial meeting on June 26, Mr. Jones explained that the bill would expand some of the current authorities of the System, enabling the organization to improve its lending services while simultaneously prescribing restrictions and limitations on the scope of this authority.

Following the brief explanation by the Subcommittee Chairman, the Members engaged in a lengthy discussion of the Farm Credit System and a thorough analysis of the changes proposed by H.R. 7548.

The first amendment considered by the Subcommittee was offered by Mr. Hance. The amendment would provide that the services of the FICB would be available to all banks and affiliated agriculture credit institutions which lend for agricultural or aquatic purposes. Mr. Glickman expressed concern that expanding access to FICBs to very large banks might jeopardize the traditional role that small banks have had in helping farmers because service to them would be diminished. Mr. Bedell pointed out that, as a general rule, large banks have access to money at times when small banks do not. He argued that limited funds of the System should not be distributed to large banks when it would result in reduced funding of small banks servicing agricultural needs.

Mr. Hance responded that the FCA would be able, under the "reasonable basis" language of his amendment, to promulgate regulations to assure preferred access to smaller banks during times of tight credit. However, the Deputy Governor of the FCA testified that agency officials were concerned that there would be insufficient legal basis under Mr. Hance's amendment for the FCA to provide regulations that would result in preferred access to smaller banks and withstand legal challenge. In reply to a question from Mr. Marlenee, the Deputy Governor stated that the amount of drawdown on FICB funds in this situation was unknown.

In response to discussion and testimony that regulations to channel and direct the FICB discounting privilege to benefit smaller banks were already in place, Mr. Jeffords offered a substitute amendment to the Hance amendment to strike section 203 (the provision which the Hance amendment had sought to modify) entirely from the bill. In discussion of the amendment, some Members expressed the concern that present law did not provide sufficient guidelines for the FCA to make distinctions in targeting access to funds, and section 203 was needed for that purpose. By a division vote of 5-to-8, the Jeffords substitute to the Hance amendment was rejected. The Subcommittee, by a vote of 2-to-10, then rejected the Hance amendment.

An amendment offered by Mr. Huckaby, which would reduce the maximum amount of an FLB loan from 100 percent to 97 percent of the appraised value of the real estate security was adopted by the Subcommittee by a unanimous voice vote. The provision would apply only to loans which are guaranteed by a governmental entity. The author of the amendment stated that it was designed to ensure that a farmer would have at least a three percent equity value in the acquisition.

The Subcommittee then adopted three amendments by unanimous voice vote. The first amendment, offered by Mr. Coleman, would incorporate a mechanism for Congressional review and possible "one House" veto of regulations promulgated by the FCA under the Act.

The second amendment, offered by Mr. Baldus, concerned farmer-control requirements for cooperatives in order to be eligible for services from BCs. The amendment retains the present statutory requirement of 80 percent voting control by farmers for associations and cooperatives generally; but reduces to 60 percent the farmer voting control level for eligibility in the case of rural electric, telephone, public utility, and service cooperatives. The 60 percent requirement also would apply to local farm supply cooperatives which have historically served the needs of a community that would not be served by other suppliers and have experienced a reduction in farmer membership due to changed circumstances beyond their control. The reduction in percentage of farmer control required for eligibility addresses the concern that increasing non-farmer membership in cooperatives because of changing demographic trends might result in ineligibility for some rural cooperatives.

The final amendment adopted by unanimous voice vote was offered by Mr. Panetta and is designed to narrow the focus of authorities given to the BCs under the bill. Mr. Panetta explained that while there is a legitimate need to expand services to eligible cooperatives in the area of international transactions, he was concerned that some provisions of the bill would over extend authority of the banks into activities inconsistent with this purpose. Authorities necessary to service export and import transactions were retained in the amendment but other authority not necessary for such services was eliminated.

The Panetta amendment was modified in response to concerns expressed by Mr. Glickman that a provision prohibiting BCs from financing margins in connection with futures transactions in foreign currency might hamper bona fide hedging transactions entered into by borrowers seeking to protect their position relative to currency exchange fluctuations. Language was included to prohibit financing of speculative futures transactions in currencies which would be defined in FCA regulations using Commodity Futures Trading Commission guidelines.

Additional modifications were incorporated into the amendment as a result of concerns expressed by other Members. The intent of the language modifications was to assure that BCs would have adequate authority to service international transactions of cooperatives commensurate with the purposes of the bill. The amendment continued to eliminate, however, provisions unrelated to facilitating export and import transactions. Mr. Panetta and Mr. Coleman agreed to have provisions in their respective amendments for Congressional monitoring of regulations issued by the FCA brought into conformity by staff.

Two amendments addressed to the administration of the FCA were adopted by voice vote. The Subcommittee Members agreed that the issues involved would be addressed again during full Committee markup. The first of these amendments was offered by Mr. English and deletes sections 504 and 505 of the bill dealing with salaries and expense allowances for FCA employees. The second amendment offered by Mr. Hance deletes section 509 of the bill which allowed the FCA headquarters to be relocated outside of Washington, D.C.

On the motion of Mr. Glickman, and in the presence of a quorum, the Subcommittee by roll call vote of 18-to-0 ordered the bill, H.R. 7548, as amended, reported to the full Committee with a recommendation that it do pass.

C. COMMITTEE MARKUP

The Committee on Agriculture met on July 31 and August 26, to consider H.R. 7548, the Farm Credit Act Amendments of 1980. The bill used for markup purposes by the Committee was H.R. 7548, as amended by the Subcommittee on Conservation and Credit.

In opening remarks, Mr. Jones, Chairman of the Subcommittee, described the history of the bill's development, including adjustments and refinements made by the Subcommittee in its deliberations. Mr. Jones reported that the bill has been co-sponsored by over 50 Members and had been approved, as amended, by the Subcommittee by a unanimous vote.

The acting Chairman, Mr. de la Garza, announced that the bill would be considered as read and open to amendments. Mr. Weaver offered an amendment which would have excluded the exportation of unprocessed logs from coverage by the provisions of the bill authorizing the banks for cooperatives to finance certain transactions of cooperatives for the import or export of agricultural commodities. After discussion and comment by other Members, Mr. Weaver withdrew the amendment.

The Committee, by voice vote, adopted an amendment offered by Mr. English. It struck from the bill provisions which had been objected to by the Committee on the Post Office and Civil Service relating to compensation and leave for some Farm Credit Administration employees. The amendment also struck from the bill provisions which would have exempted the Farm Credit Administration from Federal law governing procurement and disposition of property. It added a new section to the bill authorizing disposition of property by the agency and providing that proceeds of property disposed of be deposited into the special fund from which Farm Credit Administration expenses are paid.

By voice vote, an amendment offered by Mr. Coleman was adopted which had the effect of relaxing the legislative review and approval provision adopted by the Subcommittee for Farm Credit Administration regulations. The amendment would require the Farm Credit Administration to submit all proposed and final regulations prior to publication, to the Committee and the Senate Committee on Agriculture, Nutrition, and Forestry. It would also subject to a two-House legislative veto agency regulations governing (1) access of other financial institutions to discount privileges with the Federal intermediate credit banks, and (2) financing by banks for cooperatives of export and import transactions of member cooperatives about which the agency and the Federal Reserve Board do not agree.

Mr. Thomas offered an amendment relating to the throughput percentage requisites for eligibility for Federal land bank and production credit association loans for processing and marketing. After discussion established that the objective of the amendment—to ensure that such authority is put to its intended purpose—could be effected by report language, Mr. Thomas withdrew the amendment.

The Committee, by voice vote, adopted an amendment offered by Mr. Bedell which would permit banks for cooperatives to make or participate in loans to non-cooperative parties for the acquisition of equipment and facilities which would then be leased to cooperatives. Under the amendment, such arrangements would be limited to domestic parties and their operations in the United States.

Mr. Panetta then offered an amendment to more narrowly define the standard to be applied in consultations between the Farm Credit Administration and the Federal Reserve Board relating to Administration regulations governing the financing by the banks for cooperatives of export and import transactions of member cooperatives. The amendment was adopted by voice vote.

Mr. Daschle discussed the need of the Committee to have full information concerning the operation of expanded authority in the bill for System financing of farmer and aquatic processing and marketing activities, and the requirement in the bill that programs be developed to ensure that sound credit be made available to young, beginning and small farmers and ranchers. He agreed that the objective could be accomplished in report language rather than through amendments to the bill.

The Committee next adopted, by voice vote, an amendment offered by Mr. Madigan modifying provisions of the bill specifying the percentage of farmer control necessary for cooperatives to be eligible for loans from banks for cooperatives. Language added by the amendment would assure competitive equity in this respect among existing and newly formed local farm supply cooperatives.

Considerable deliberation involved section 203 of the bill which addresses the issue of the authority of Federal intermediate credit banks to make loans and extend other financial assistance, including discounting and purchase of commercial paper, to other financial institutions (OFIs) which are not System members. Debate focused on the question of appropriate access of OFI's to such services. Two amendments offered by Mr. Daschle, as well as related amendments by Mr. Thomas and Mr. Jeffords, were rejected by the Committee after extended discussion.

Discussion generally addressed concern that guidelines for determining OFI access, as set out in the bill, might not be sufficiently clear to assure access to FICB financial services for all institutions that legitimately need them. Mr. Daschle's first amendment retained two of the four guidelines for determining access contained in the bill under consideration—those requiring that (a) OFIs seeking FICB services must be significantly involved in lending for agricultural or aquatic purposes; and (b) OFIs not use such services to expand their financing activities to persons and for purposes other than those authorized elsewhere in the bill. The other two guidelines—that OFIs have (a) limited access to national or regional capital markets; and (b) a continuing need for supplementary sources of funds, were struck and replaced in the amendment by mandatory access amounts of not less than $30 million (or $50 million upon the payment of additional fees or the making of additional equity investment). Mr. Daschle explained that these changes were necessary to eliminate potential exclusion of rural banks that are affiliated with bank holding companies. He explained that section 23(a) of the Federal Reserve Act has, to a large extent, a prohibitive effect on exchanges of loans and deposits between such holding companies and their affiliates. He said that lack of a clear definition as to what constitutes accessibility to national and regional capital markets and a continuing need for supplemental sources of funds could result in exclusion of banks having affiliate relationships from opportunities for discounting with the FICBs.

Mr. Jones, Mr. Madigan, Mr. Harkin and Mr. Glickman spoke in opposition to the amendment. Mr. Jones, joined by Mr. Glickman, argued that the amendment would expand access too far, effectively limiting availability of capital to PCAs and resulting in higher interest rates and, ultimately, higher costs to farmers. Mr. Jones recommended that assurance of access to affiliates legitimately in need could be accomplished through report language. Mr. Madigan and Mr. Harkin pointed out that specific access amounts would act as a legal mandate of access to a rather broad range of financial institutions. The view was expressed that relieving OFIs from showing a need for FICB access by way of guidelines that would be struck by the amendment would frustrate efforts to channel and direct FICB services most effectively.

Responding to these concerns, Mr. Thomas offered an amendment to the amendment intended to change the operative language on specific access amounts from mandatory ("shall") to discretionary ("may"). After comment by other Members, the amendment to the amendment was rejected by a division vote of 6-to-13. Thereupon Mr. Daschle's amendment was rejected by a division vote of 3-to-13.

Mr. Daschle then offered his second amendment to section 203. It would have eliminated the specific guidelines and directed that FCA regulations ensure availability of FICB services on a reasonable basis to any OFI unable to obtain adequate funds on reasonable terms and conditions from other sources, including its affiliates and subsidiaries.

Mr. Jeffords offered a substitute amendment that would have stricken section 203 of the bill altogether. He contended that an adequate regulatory mechanism for effectively directing FICB services to meet agricultural credit needs through OFIs was already in place. Mr. Jeffords agreed with Mr. Daschle that the bill's guidelines were too susceptible to varying interpretations. It would be possible, he suggested, to write regulations under provisions of section 203 that would actually be counterproductive of the legislative intent. Mr. Marlenee expressed concern that the guidelines could be interpreted too broadly. Mr. Panetta opposed the substitute amendment. The guidelines in section 203 act as limitations, he said, and for access to be determined solely on a regulatory basis without statutory limitations might leave an "open door" to greater expanded access through the regulatory route.

The substitute amendment offered by Mr. Jeffords was defeated by a division vote of 4-to-10. Mr. Daschle's second amendment was defeated by a division vote of 4-to-9.

The Committee rejected, by a division vote of 3-to-7, an amendment offered by Mr. Glickman which would have had the effect of terminating or "sunsetting' the OFI and export and import financing provisions of the bill after five years, unless they are earlier extended by Congress.

An amendment by Mr. Madigan was adopted by voice vote. It requires that the Comptroller General conduct an evaluation of programs and activities authorized under provisions of the bill and report to Congress.

The Committee adopted, by voice vote, an amendment offered by Mr. Panetta which would authorize the System banks to deposit their funds and securities with State banks which are not members of the Federal Reserve System but which are insured by the Federal Deposit Insurance Corporation.

The Committee also adopted, by voice vote, two other amendments. One, offered by Mr. Jones, struck out a provision in section 403 of the bill which would have excepted agricultural credit transactions of System institutions and certain agricultural credit corporations from

State laws imposing duties similar to those under the Federal Truth-in-Lending Act. The other, offered by Mr. Hance, would permit the FCA to locate its principal office in the District of Columbia (as required by current law) or in the Washington metropolitan area.

On motion by Mr. Findley, the Committee agreed that the staff consider for incorporation into the report language suggested by Mr. Glickman to clarify the Committee's intent with respect to the OFI provisions of the bill. The staff was also directed to consider for incorporation into the Committee report language suggested by Mr. Madigan relating to insurancee programs offered by System institutions.

Upon motion of Mr. Jones, the Committee, in the presence of a quorum, by a rollcall vote of 41-to-0, ordered the bill, H.R. 7548, as amended, reported to the House with a recommendation that it do pass.

ADMINISTRATION POSITION

The Committee received the following report from the Farm Credit Administration concerning enactment of H.R. 7548, as amended:

FARM CREDIT ADMINISTRATION,
Washington, D.C., September 2, 1980.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On June 11, 1980, the Farm Credit Act Amendments of 1980 were introduced by Congressmen Jones and Madigan, and subsequently referred to the Committee on Agriculture. As the bill progressed through the mark-up before the Subcommittee on Conservation and Credit and the full Committee, the bill attracted additional support and is currently co-sponsored by 57 members.

H.R. 7548 is largely the product of intensive review by the institutions of the Farm Credit System and the Farm Credit Administration of their experiences under the Farm Credit Act of 1971. The proposals which surfaced in the course of that review were studied and refined, and a set of recommendations for a legislative package was submitted to the Federal Farm Credit Board for consideration. Those basic proposals approved by the Board and which were reflected in the bill would assist the system in achieving the stated objective in the 1971 Act:

> Of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operation.

A number of the provisions of the bill would reflect changed circumstances affecting American agriculture. Some would enable the institutions of the Farm Credit System to more adequately service the credit and related needs of member-borrowers. Others would enhance the effectiveness of the Farm Credit Administration in carrying out its statutory responsibilities of examining and supervising those institutions.

On August 26, 1980, the Committee on Agriculture voted without opposition to report out H.R. 7548 to the House of Representatives. As reported, the bill incorporates a number of substantial amendments from the version originally introduced on June, 1980. The amendments are the product of substantial study, discussion and negotiation by members of the Subcommittee on Conservation and Credit and the Committee on Agriculture in the course of respective mark-ups of the bill, with the input of parties interested in, or potentially affected by the various provisions of the bill.

There continues to exist within the Farm Credit System a broad and committed concensus in favor of H.R. 7548 as reported by the Committee. Consequently we ardently seek your support and that of the entire Committee in bringing H.R. 7548 to the House floor for early consideration and favorable action.

Sincerely,

DONALD E. WILKERSON, *Governor.*

The Committee received the following report from the Office of Personnel Management concerning H.R. 4782, an earlier version of H.R. 7548, as amended. The provisions of H.R. 4782 to which the Office objected in its report are not contained in H.R. 7548, as ordered reported by the Committee.

OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., October 30, 1979.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Office of Personnel Management wishes to advise the Committee on Agriculture of its views on H.R. 4782, the "Farm Credit Act Amendments of 1979." We are concerned with certain personnel provisions in title V of the bill.

Section 502 of the bill would amend the Farm Credit Act of 1971 (Public Law 92-181) to increase the compensation of the members of the Federal Farm Credit Board from $100 per day to the daily rate for GS-18. We have no objection to this change.

Sections 503, 504, and 505 would amend the Farm Credit Act to remove the position of Governor of the Farm Credit Administration from level III of the Executive Schedule, and to remove the present GS-18 limitation on pay for Deputy Governors of the Farm Credit Administration. The Federal Farm Credit Board would be authorized to fix the salaries of the Governor and the Deputy Governors, up to the rate for level I of the Executive Schedule.

We object very strongly to this change. The Executive Schedule was established to provide an equitable and rational pay structure for the most important positions throughout the executive branch. The Executive Schedule is intended to cover not only top positions in the executive departments and the regular Federal agencies, but also top positions in such relatively independent instrumentalities of the Federal Government as the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Tennessee Valley Authority, the Export-

Import Bank, the Overseas Private Investment Corporation, and the Farm Credit Administration. With the exception of the Chairman of the Board of Governors of the Federal Reserve System, the top officer in each of these entities is compensated at level III of the Executive Schedule. (The Federal Reserve Chairman is compensated at level II.) The Farm Credit Administration has not presented any good reason for its proposal to fix a level I limit on the pay of its Governor, and we believe any increase from the present level III would be inappropriate.

We also believe it would be inappropriate to remove the GS-18 ceiling on the authority of the Farm Credit Administration to fix the salary of the Deputy Governors. These positions are now in the Senior Executive Service, with potential for substantially increased compensation through performance and rank awards, and there seems to be no clear rationale for removal of the ceiling.

In addition to removing the GS–18 limitation on pay for Deputy Governors, the bill would authorize the Governor of the Farm Credit Administration to appoint and fix the pay of its employees without regard to the laws governing Federal employment, but with pay limited to the rate for level V of the Executive Schedule.

We must object to this provision. Under section 5102(c) (14) of title 5, United States Code, employees who are paid from nonappropriated funds are exempt from the General Schedule classification and pay system. This is the basis under which certain Federal financial agencies, such as the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, are excepted from the General Schedule and are thus able to fix pay administratively. While section 5.16 of the Farm Credit Act would constitute authority to operate without appropriated funds, it is our understanding that Congress has consistently chosen to ignore this provision of law and specifically appropriate funds for the administrative expenses of the Farm Credit Administration, with these funds to be drawn from assessments collected from the member institutions of the Farm Credit System. (See, for example, Title V of Public Law 95–448, October 11, 1978, for the fiscal year 1979 appropriation.) As long as Congress chooses to require the Farm Credit Administration to operate under the appropriations process, we do not believe it would be appropriate to remove this agency from the Government-wide General Schedule system.

The Farm Credit Administration has argued that these exceptions from the normal Federal employment laws are needed to facilitate hiring new employees at rates above the minimum of the grade without OPM clearance and to raise salaries to a level competitive with the Farm Credit System. Under the provisions of the Civil Service Reform Act, OPM has already provided for the delegation of advanced in-hiring rate approval at GS–11 and above to agencies, subject to performance agreements, and this flexibility should provide considerable assistance to the Farm Credit Administration. We note that the Farm Credit Administration has not requested that OPM exercise its authority under 5 U.S.C. 5303 to establish special higher rates of pay for occupations in areas where higher private sector pay rates significantly handicap the Government's recruitment or retention of well-qualified persons. The new Senior Executive Service should also help in recruiting at higher levels. With respect to the need to keep salaries competitive with those in the Farm Credit System, we note that, under section 5.18(4) of the Farm Credit Act, the Farm Credit Administration is responsible for approving the salary schedules for the member institutions of the Farm Credit System (except the associations within that System). We are surprised that the Farm Credit Administration now argues that these salaries which it has approved are so high that it is unable to attract employees from these member institutions to the Administration itself.

Similarly, we must object to the Farm Credit Administration's desire to be excepted from the normal civil service appointment and tenure laws. Under the Civil Service Reform Act, we are making rapid progress toward the decentralization of the examining process, where such decentralization would be appropriate, and we believe these efforts will greatly relieve any staffing delays the Farm Credit Administration has encountered. We note that we have already authorized Special Examining Units under which the Farm Credit Administration has been delegated the entire examining process for four of its major occupations, subject to OPM supervision.

The Farm Credit Act would be further amended to authorize the Board to pay travel, relocation, and subsistence expenses of a newly-appointed Governor and his or her immediate family; and allowances for travel and subsistence expenses of persons under consideration for appointment to the position of Governor in connection with interviews requested by the Board. Relocation expenses are not currently reimbursed for a newly appointed individual in an Executive Schedule position, or for preappointment interviews at that level. The Farm Credit Administration would also be excepted from the provisions of chapter 57 of title 5, United States Code, relating to reimbursement for travel and transportation, and to travel, relocation, and subsistence expenses of new appointees, transferees, and candidates for employment. We must defer to the General Services Administration, which is responsible for the administration of these provisions.

Section 507 and 508 would provide portability of service credit for non-Federal service in Farm Credit System institutions if the employee moves to a position subject to the Civil Service retirement law after the effective date of the amendment. The Farm Credit Administration evidently feels that portability of retirement benefits would be an incentive for employees in the System institutions to join the Administration, but such a use of the retirement system would be inappropriate and prohibitively expensive. Since no agency contributions would have been made for the service in the System, employees would have the option of taking a 10 percent reduction in annuity rather than making a deposit of their own contributions. Furthermore, this provision could create a dangerous precedent that would lead other groups to press for the same expensive treatment. The Civil Service Retirement System is an integral part of the Government's personnel program, designed to encourage and reward service to the Federal Government. There is no basis on which to reward non-Federal service, and such a practice would reduce the system's effectiveness as an instrument of personnel management.

We are sympathetic to the problems of retirement portability that are faced in the Farm Credit Administration, but these problems are the same as those faced by the Federal Government generally whenever it recruits from outside its own ranks. In fact, the issue of retirement portability is a major problem for all employers in our economy. It is because the problem is so general that two national study groups, the President's Commission on Pension Policy and the Universal Coverage Study Group at the Department of Health, Education, and Welfare, will consider, along with other matters, the entire area of portability. We believe that it would be undesirable to make any changes in this area until the findings of those two study bodies are available.

Section 509 is intended, we believe, to authorize leave balances earned under the Farm Credit System to be transferred to Federal employment. However, the bill as drafted would not accomplish this. The transfer of leave authorization in section 6308 of title 5, United States Code, applies to the transfer of leave between different *Federal* leave systems and has no application to the transfer of leave earned under non-Federal systems to the Federal system. The mention of the employees of Farm Credit System institutions in 5 U.S.C. 6301(2)(vii), and the related exclusion from the present 5 U.S.C. 6308, are obsolete references, dating from the period before the 1959 Act when these employees were actually Federal employees. Since that Act, however, they have not been Federal employees, and have not met the definition of "employee" in 5 U.S.C. 6301(2). Therefore, amending 5 U.S.C. 6308 as proposed in section 509 of the draft bill would not accomplish its purpose. Even if it were redrafted, however, we would object strongly to this provision. Accepting transferred leave from a non-Federal organization would be costly, and we believe it would set a dangerous precedent.

The Office of Management and Budget advises that enactment of these provisions would not be consistent with the Administration's objective.

Sincerely yours,

ALAN K. CAMPBELL, *Director.*

The Committee received the following report from the Department of Justice concerning the "legislative veto" provisions of H.R. 7548, as amended:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., August 22, 1980.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture,
House of Repreesntatives,
Washington, D.C.

DEAR CHAIRMAN FOLEY: This letter presents the views of the Department of Justice concerning § 507(c) of H.R. 7548, the proposed Farm Credit Act Amendments of 1980. That subsection would purport to authorize Congress, by concurrent resolutions that would not be submitted to the President for his approval or veto, to disapprove certain regulations issued by the Farm Credit Administration. It has been the consistent position of the Department of Justice and of this Administration that legislative disapproval devices of this sort are unconstitutional.

Section 7, clauses 2 and 3, of Article I of the Constitution require that legislation, in whatever form, must be presented to the President for his approval or veto, and may be enacted over his veto only by two-thirds of both Houses of Congress. Under such disapproval authority as § 507(c) envisions, Congress could legislate with respect to the regulatory authority of the Farm Credit Administration without permitting the President to exercise his constitutionally mandated role in the review of legislation.

This legal analysis does not derogate in any way from the legitimacy or significance of proper legislative oversight. A concern is evident in the provisions of the proposed § 507(c) for consistency between certain Farm Credit Administration regulations and the "national banking policies, objectives, and limitations," as interpreted by the Board of Governors of the Federal Reserve System. Congress may contitutionally accommodate this concern in any of three ways. It could trust the Farm Credit Administration, subject to ordinary oversight, to respect national banking policy and to accommodate, as proper, the comments of the Board of Governors of the Federal Reserve System and other interested parties in its promulgation of regulations. It could subject regulations to the kind of "report and wait" provision that § 507(b) as now drafted would require for all proposed Administration regulations. Finally, it could treat proposed regulations essentially as recommendations to Congress, and condition their final promulgation on Congress' approval of the regulations by joint resolutions to be presented to the President. Any of these options would properly respect the constitutionally mandated separation of powers.

The Office of Management and Budget has advised that enactment of § 507(c) would not be in accord with the program of the President.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

CURRENT AND FIVE SUBSEQUENT FISCAL YEAR COST ESTIMATE

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee on Agriculture submits the following cost estimate. The Committee concurs with the estimate submitted by the Congressional Budget Office and included elsewhere in this report that no cost will be incurred by the Government as a result of enactment of H.R. 7548, as amended.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 7548, as amended, should have no inflationary impact on the economy. Credit at reasonable rates of interest is an essential element in the ability of farmers, ranchers, and fishermen to produce an abundance of agricultural and aquatic commodities for the Nation's consumers at reasonable prices. A primary objective of the Farm Credit Act of 1971, as amended by the bill, is to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures) are not considered applicable. The estimate and comparison prepared by the Director of the Congressional Budget Office under clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 27, 1980.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7548, the Farm Credit Act Amendments of 1980, as ordered reported by the House Committee on Agriculture, August 26, 1980.

This bill would make a number of amendments to the Farm Credit Act of 1971. Certain operations of farm credit institutions, including federal land banks, banks for cooperatives, and production credit associations, would be altered but there would be no effect on the federal budget. Therefore, no cost will be incurred by the government as a result of enactment of this legislation.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 7548, as amended.

No specific oversight activities, other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of Rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman).

* * * * * * *

FARM CREDIT ACT OF 1971

To further provide for the farmer-owned cooperative system of making credit available to farmers and ranchers and their cooperatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Credit Act of 1971".

POLICY AND OBJECTIVES

SEC. 1.1 (a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this Act to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

SEC. 1.2. THE FARM CREDIT SYSTEM.—The Farm Credit System shall include the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to the supervision of the Farm Credit Administration.

TITLE I—FEDERAL LAND BANKS AND ASSOCIATIONS

PART A—FEDERAL LAND BANKS

SEC. 1.3. ESTABLISHMENT; TITLE; BRANCHES.—The Federal land banks established pursuant to section 4 of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this title, as may be necessary or expedient to implement this Act. Unless an existing Federal land bank is merged with one or more other such banks under section 4.10 of this Act, there shall be a Federal land bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

Sec. 1.4. Corporate Existence; General Corporate Powers.—Each Federal land bank shall be a body corporate and, subject to supervision by the Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make **[**loans and**]** *and participate in loans, make* commitments for credit, accept advance payments, and provide services and other assistance as authorized in this Act, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, and vice president, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act, define their duties, and require surety bonds or make other provision against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents are elected or provided for; its property acquired, held, and transferred; its loans and appraisals made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, terms, conditions, and rates of interest as may be determined.

(11) Accept deposits of securities or of current funds from its Federal land bank associations and pay interest on such funds.

(12) Participate with one or more other Federal land banks in loans under this title on such terms as may be agreed upon among such banks, *participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act, and participate with lenders which are not Farm Credit System institutions in loans that the bank is authorized to make under this title.*

(13) Approve the salary scale of the officers and employees of the Federal land bank associations and the appointment and compensation of the chief executive officer thereof and supervise the exercise by such associations of the functions vested in or delegated to them.

(14) Deposit its securities and its current funds with any member bank of the Federal Reserve System *or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act* and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs,

under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(15) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency, [and make such other investments as may be authorized by the Farm Credit Administration.] *and, as may be authorized by its board of directors and approved by the Farm Credit Administration, (i) sell to lenders which are not Farm Credit System institutions interests in loans, (ii) buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock, and (iii) make other investments.*

(16) Conduct studies and make and adopt standards for lending.

(17) Delegate to Federal land bank associations such functions vested in or delegated to the bank as it may determine.

(18) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(19) Perform any function delegated to it by the Farm Credit Administration.

(20) Require Federal land bank associations to endorse notes and other obligations of its members to the bank.

(21) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(22) Accept contributions to its capital from Federal land bank associations and account therefor as authorized by the Farm Credit Administration.

(23) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan and other losses, whether to protect against capital impairment or for any other purpose.

SEC. 1.5. LAND BANK STOCK: VALUE: SHARES: VOTING: DIVIDEND.—(a) The capital stock of each Federal land bank shall be divided into shares of par value of $5 each, and may be of such classes as its board of directors may determine with the approval of the Farm Credit Administration.

(b) Voting stock of each bank shall be held only by the Federal land bank associations and direct borrowers and borrowers through agents who are farmers or ranchers, which stock shall not be transferred, pledged, or [hypotheticated] *hypothecated* except as authorized pursuant to this Act.

(c) The board of each bank shall from time to time authorize the issue or increase of its capital stock necessary to permit the issuance of additional shares to the Federal land bank associations so that members of such associations purchasing stock or participation certificates therein may be eligible for loans from the bank.

(d) [Nonvoting stock may be issued to the Governor of the Farm Credit Administration, and may also be issued to Federal land bank associations in amounts which will permit the bank to extend financial assistance to eligible persons other than farmers or ranchers.] *Nonvoting stock may be issued to the Governor of the Farm Credit Administration, to borrowers as patronage refunds, and may also be issued to Federal land bank associations in amounts that will permit the bank to extend financial assistance to eligible persons other than farmers, ranchers, and producers or harvesters of aquatic products. Nonvoting stock also may be issued to and shall be retired for other Farm Credit System institutions as may be authorized by its board of directors and approved by the Farm Credit Administration.* Participation certificates with a face value of $5 each may be issued in lieu of nonvoting stock when the bylaws of the bank so provide.

(e) Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration. Non-cumulative dividends may be payable on other stock and participation certificates of the bank. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

(f) Patronage refunds may be paid in nonvoting stock, participation certificates, allocated surplus, and other equities of the bank, or cash, or in both equities and cash, as determined by the board of the bank, to borrowers of the fiscal year for which such patronage refunds are distributed. All patronage refunds shall be paid in the proportion that the amount of interest on the loans to each borrower during the year bears to the interest on the loans of all borrowers during the year or on such other proportionate patronage basis as the Farm Credit Administration may approve.

(g) Equities to evidence contributions to capital may be issued to Federal land bank associations when the bylaws of the bank so provide.

[Sec. 1.6. Real Estate Mortgage Loans.—The Federal land banks are authorized to make long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, and continuing commitments to make such loans under specified circumstances, or extend other financial assistance of a similar nature to eligible borrowers, for a term of not less than five nor more than forty years.]

Sec. 1.6. Real Estate Mortgage Loans.—The Federal land banks are authorized to make or participate with other lenders in long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, or to producers or harvesters of aquatic products, and make continuing commitments to make such loans under specified circumstances, or extend other financial assistance of a similar nature to eligible borrowers, for a term of not less than five nor more than forty years.

Sec. 1.7. Interest Rates and Other Charges.—Loans made by a Federal land bank shall bear interest at a rate or rates, and on such terms and conditions, as may be determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration *as provided in section 4.17 of this Act*. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserve and expenses of the banks and Federal land bank associations, and providing services to stockholders and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

SEC. 1.8. ELIGIBILITY.—The services authorized in this title may be made available to persons who are or become stockholders or members in the Federal land bank associations and are (1) bona fide farmers [and ranchers], *ranchers, or producers or harvesters of aquatic products,* (2) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs, or (3) owners of rural homes.

SEC. 1.9. SECURITY.—[Loans shall not exceed 85 per centum of the appraised value of the real estate security, and shall be secured by first liens on interest in real estate of such classes as may be approved by the Farm Credit Administration.] *Loans originated by a Federal land bank or in which it participates with a lender which is not a Farm Credit System institution shall not exceed 85 per centum of the appraised value of the real estate security, or such greater amount, not to exceed 97 per centum of the appraised value of the real estate security, as may be authorized under regulations of the Farm Credit Administration for loans guaranteed by Federal, State, or other governmental agencies, and shall be secured by first liens on interest in real estate of such classes as may be approved by the Farm Credit Administration.* The value of security shall be determined by appraisal under appraisal standards prescribed by the bank and approved by the Farm Credit Administration, to adequately secure the loan. However, additional security may be required to supplement real estate security, and credit factors other than the ratio between the amount of the loan and the security value shall be given due consideration.

SEC. 1.10. PURPOSES.—[Loans made by the Federal land banks to farmers and ranchers may be for any agricultural purpose and other credit needs of the applicant.] *Loans made by the Federal land banks to farmers, ranchers, and producers or harvesters of aquatic products may be for any agricultural or aquatic purpose and other credit needs of the applicant, including financing for basic processing and marketing directly related to the applicant's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products: Provided, That the applicant's operations shall supply at least 20 per centum, or such larger per centum that is required by the board of directors of the bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended.* Loans may also be made to rural residents for rural housing financing under regulations of the Farm Credit Administration. Rural housing financed under this title shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, planned or recommended for the rural area where it is located: *Provided, however,* That a Federal land bank may not at any one time have a total of loans outstanding for such rural housing to persons other than farmers or ranchers in amounts exceeding 15 per centum of the total of all loans outstanding in such bank: *Provided further*, That for rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants. Loans to persons furnishing farm-related services to farmers and ranchers directly related to their on-farm operating needs may be made for the necessary capital structures and equipment and initial working capital for such services. The banks may own and lease, or lease with option to purchase, to persons eligible for assistance under this title, facilities needed in the operations of such persons.

Sec. 1.11. Services Related to Borrowers' Operations.—The Federal land banks may provide technical assistance to borrowers, members, and applicants and may make available to them at their option such financial related services appropriate to their on-farm *and aquatic* operations as determined to be feasible by the board of directors of each district bank, under regulations of the Farm Credit Administration.

Sec. 1.12. Loans Through Associations or Agents.—[a] The Federal land banks shall, except as otherwise herein provided, make loans through a Federal land bank association serving the territory in which the real estate offered by the applicant is located. If there is no active association chartered for the territory where the real estate is located, or if the association has been declared insolvent, the bank may make the loan through another such association, directly, or through such bank or trust company or savings or other financial institution as it may designate. When the loan is not made through a Federal land bank association, the applicant shall purchase stock in the bank in an amount not less than $5 nor more than $10 for each $100 of the loan and the loan shall be made on such terms and conditions as the bank shall prescribe.

Part B—Federal Land Bank Associations

Sec. 1.13. Oranizations; Articles; Charters; Powers of the Governor.—Each Federal land bank association chartered under section 7 of the Federal Farm Loan Act, as amended, shall continue as a federally chartered instrumentality of the United States. A Federal land bank association may be organized by any group of ten or more persons desiring to borrow money from a Federal land bank, including persons to whom the Federal land bank has made a loan directly or through an agent and has taken as security real estate located in the territory proposed to be served by the association. The articles of association shall describe the territory within which the association proposes to carry on its operations. Proposed articles shall be forwarded to the Federal land bank for the district, accompanied by an agreement to subscribe on behalf of the association for stock of the land bank equal to not less than $5 nor more than $10 per $100 of the amount of the aggregate loans desired or held by the association members. Such stock may be paid for by surrendering for cancellation stock in the bank held by a borrower and the issuance of an equivalent amount of stock to such borrower in the association. The articles shall be accompanied by a statement signed by each of the members of the proposed association establishing his eligibility for, and that he has or desires a Federal land bank loan; that the real estate with respect to which he desires a loan is not being served by another Federal land bank association; and that he is or will become a stockholder in the proposed association. A copy of the articles of association shall be forwarded to the Governor of the Farm Credit Administration with the recommendations of the bank concerning the need for the proposed association in order to adequately serve the credit needs of eligible persons in the proposed territory and a statement as to whether or not the territory includes any territory described in the charter of another Federal land bank association. The Governor for good cause shown may deny the charter applied for. Upon the approval of the proposed articles by the Governor and the issuance of such charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Governor shall have power, in the terms of the charter, under rules and regulations prescribed by him or by approving bylaws of the association, to provide for the organization of the association, the initial amount of stock of such association, the territory within which its operations may be carried on and to direct at any time changes in the charter of such association as he finds necessary in accomplishing the purposes of this Act.

SEC. 1.14. BOARD OF DIRECTORS.—Each Federal land bank association shall elect from its voting shareholders a board of directors of such number, for such terms, in such manner, and with such qualifications as may be required by its bylaws.

SEC. 1.15. GENERAL CORPORATE POWERS.—Each Federal land bank association shall be a body corporate and, subject to supervision of the Federal land bank for the district and of the Farm Credit Administration, shall have the power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real estate and personal property necessary or convenient to its business.

(6) Operate under the direction of its board of directors in accordance with this Act.

(7) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this Act; define their duties; and require surety bonds or make other provision against losses occasioned by employees. No director shall, within one year after the date when he ceases to be a member of the board, be elected or designated a salaried employee of the association on the board of which he served.

(8) Prescribe by its board of directors, its bylaws, not inconsistent with law, providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers and employees elected or provided for; its property acquired, held, and transferred; its general business conducted; and privileges granted it by law exercised and enjoyed.

(9) Accept applications for Federal land bank loans and receive from such bank and disburse to the borrowers the proceeds of such loans.

(10) Subscribe to stock of the Federal land bank of the district.

(11) Elect by its board of directors a loan committee with power to elect applicants for membership in the association and recommend loans to the Federal land bank, or with the approval of the Federal land bank, delegate the election of applicants for membership and the approval of loans within specified limits to other committees or to authorized employees of the association.

(12) Upon agreement with the bank, take such additional actions with respect to applications and loans and perform such functions as are vested by law in or delegated to the Federal land banks as may be agreed to or delegated to the association.

(13) Endorse and [shall] become liable to the bank on loans it makes to association members.

(14) Receive such compensation and deduct such sums from loan proceeds with respect to each loan as may be agreed between the association and the bank and [may] make such other charges for services as may be approved by the bank.

(15) Provide technical assistance to members, borrowers, applicants, and other eligible persons and make available to them, at their option, such financial related services appropriate to their operations as it determines, with Federal land bank approval, are feasible, under regulations of the Farm Credit Administration.

(16) Borrow money from the bank and, with the approval of such bank, borrow from and issue its notes or other obligations to any commercial bank or other financial institutions.

(17) Buy and sell obligations of or insured by the United States or any agency thereof or of any banks of the Farm Credit System.

(18) Invest its funds in such obligations as may be authorized in regulations of the Farm Credit Administration and approved by the bank and deposit its securities and current funds with any member bank of the Federal Reserve System, with the Federal land bank, or with any bank insured by the Federal Deposit Insurance Corporation, and pay fees therefor and receive interest thereon as may be agreed.

(19) Perform such other function delegated it by the Federal land bank of the district.

(20) Exercise by its board of directors or authorized officers or agents all such incidental powers as may be necessary or expedient in the conduct of its business.

(21) Contribute to the capital of the bank.

SEC. 1.16. ASSOCIATION STOCK: VALUE OF SHARES; VOTING.—(a) The shares of stock in each Federal land bank association shall have a par value of $5 each. No person but borrowers from the bank shall become members and stockholders of the association. If an application for membership is approved and if the applied-for loan is granted, the member of the association shall subscribe to stock in the association in an amount not less than 5 per centum nor more than 10 per centum of the face amount of the loan as determined by the bank. Stock shall be paid for in cash by the time the loan is closed. The association shall then purchase a similar amount of stock in the land bank. Stock shall be retired and paid at [fair] book value not to exceed par, as determined by the association, upon the full repayment of the loan and if the loan is in default may be canceled for application on the loan, or under other circumstances, for other disposition, when approved by the bank. The aggregate capital stock of each association shall be increased from time to time as necessary to permit the securing of requested loans from the bank for the association's members.

(b) The stock issued by an association may be voting stock or nonvoting stock of such classes as the association determines with the approval of the bank under regulations prescribed by the Farm Credit Administration. Each holder of voting stock shall be entitled to only one vote, and no more, in the election of directors and in deciding questions at meetings of stockholders. Participation certificates may be issued in lieu of nonvoting stock when the bylaws of the association so provide.

(c) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan (1) made by a Federal land bank which it sells to a lender which is not a Farm Credit System institution, or (2) which such lender retains or acquires in participating in the loan with a Federal land bank.

PART C—PROVISIONS APPLICABLE TO FEDERAL LAND BANKS AND FEDERAL LAND BANK ASSOCIATIONS

SEC. 1.17. LAND BANK RESERVES; DIVIDENDS.—(a) Each Federal land bank shall, at the end of each fiscal year, carry to reserve account a sum of not less than 50 per centum of its net earnings for the year until said reserve account shall be equal at the end of such year, after restoring any impairment thereof, to the outstanding capital stock and participation certificates of the bank. Thereafter, a sum equal to 10 per centum of the year's net earnings shall be added to the reserve account until the account shall be equal to 150 per centum of the outstanding capital stock and participation certificates of the bank. Any amounts added to the reserve account in [exess] *excess* of 150 per centum of the outstanding capital stock and participation certificates may be withdrawn from such reserves with the approval of the Farm Credit Administration.

(b) Any bank may declare a dividend or dividends, *and pay patronage refunds, or do any of them, as provided in its bylaws,* out of the whole or any part of net earnings which remain after (1) the maintenance of the reserve as required in subsection (a) hereof, (2) the payment of the franchise tax as required by section 4.0 for any year in which any stock in the bank is held by the Governor of the Farm Credit Administration, and (3) [with] *the* approval of the Farm Credit Administration.

SEC. 1.18. ASSOCIATION RESERVES; DIVIDENDS.—(a) Each Federal land bank association shall, out of its net earnings at the end of each fiscal year, carry to reserve account a sum not less than 10 per centum of such earnings until the reserve account shall equal 25 per centum of the outstanding capital stock and participation certificates of such association after restoring any impairment thereof. Thereafter, 5 per centum of the net earnings for the year shall be added to such reserve account until it shall equal 50 per centum of the oustanding capital stock and participation certificates of the association. Any amounts in the reserve account in excess of 50 per centum of the outstanding capital stock and participation certificates may be withdrawn with the approval of the Federal land bank.

[(b) Any association may declare a dividend or dividends out of the whole or any part of its net earnings which remain after (1) maintenance of the reserve required in subsection (a) hereof and (2) bank approval.**]**

(b) Any association may declare a dividend or dividends and pay patronage refunds, or do any of them, as provided in its bylaws, out of the whole or any part of its net earnings available therefor which remain after (1) maintenance of the reserve required in subsection (a) of this section, (2) bank approval. All patronage refunds shall be paid on the proportionate patronage basis approved by the bank. Dividends shall be noncumulative, and the rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the Federal land bank by such classes and issues, but otherwise dividends shall be without preference.

(c) Whenever any association is liquidated, a sum equal to its reserve account as required in this Act shall be paid and become the property of the bank in which such association is a shareholder.

SEC. 1.19. AGREEMENTS FOR SHARING GAINS OR LOSSES.—Each Federal land bank may enter into agreements with Federal land bank associations in its district for sharing the gain or losses on loans or on security held therefor or acquired in liquidation thereof, and associations are authorized to enter into any such agreements and also, subject to bank approval, agreements with other associations in the district for sharing the risk of loss on loans endorsed by each such association. *As may be authorized by the bank in accordance with regulations of the Farm Credit Administration, associations also may enter into agreements with other Farm Credit System institutions to share loans and other losses, whether to protect against capital impairment or for any other purpose.*

SEC. 1.20. LIENS ON STOCK.—Each Federal land bank and each Federal land bank association shall have a first lien on the stock and participation certificates it issues, except on stock *or participation certificates* held by the Governor of the Farm Credit Administration *or other Farm Credit System institutions*, for the payment of any liability of the stockholder to the association or to the bank, or to both of them.

SEC. 1.21. TAXATION.—Every Federal land bank and every Federal land bank association and the capital reserves, and surplus thereof, and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Federal land bank or a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Federal land banks and the notes, bonds, debentures, and other obligations issued by the banks or associations shall be deemed and held to be instrumentalities of the

Government of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 31 U.S.C. 742(a)).

TITLE II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS

PART A—FEDERAL INTERMEDIATE CREDIT BANKS

SEC. 2.0. ESTABLISHMENT; BRANCHES.—The Federal intermediate credit banks established pursuant to section 201(a) of the Federal Farm Loan Act, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration not inconsistent with the provisions of this title as may be necessary or expedient to implement this Act. Unless an existing Federal intermediate credit bank is merged with one or more other such banks under section 4.10 of this Act, there shall be a Federal intermediate credit bank in each farm credit district. It may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration, it may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 2.1. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.—Each Federal intermediate credit bank shall be a body corporate and, subject to supervision of the Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make and discount loans and commitments for credit, and provide services and other assistance as authorized in this Act, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, any vice president, a secretary, and a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act; define their duties and require surety bonds or make other provision against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents elected or provided for; its property acquired, held, and transferred; its loans and discounts made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11) Purchase nonvoting stock in or pay in surplus to, and accept deposits of securities or of current funds from production credit associations holding its shares and pay interest upon such funds.

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System *or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act*, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13) Buy and sell obligations of or insured by the United States or any agency thereof, or securities backed by the full faith and credit of any such agency [and make such other investments as may be authorized by the Farm Credit Administration.], *and, as may be authorized by its board of directors and approved by the Farm Credit Administration, (i) buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock, and (ii) make other investments.*

(14) Delegate to the production credit associations such functions vested in or delegated to the intermediate credit bank as it may determine.

(15) Approve the salary scale of the officers and employees of the association and the appointment and compensation of the chief executive officer thereof and supervise the exercise by the production credit associations of the functions vested in or delegated to them.

(16) Amend and modify loan contracts, documents, payment schedules, and release, subordinate, or substitute security for any of them.

(17) Conduct studies and make and adopt standards for lending.

[(18) Enter into loss sharing agreements with other Federal intermediate credit banks and production credit associations.]

(18) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purposes.

(19) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(20) Participate with one or more other Federal intermediate credit banks or production credit associations in the district, in loans under this title on such terms as may be agreed upon among such banks and associations, *and participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act.*

(21) Perform any function delegated to it by the Farm Credit Administration.

SEC. 2.2. FEDERAL INTERMEDIATE CREDIT BANK STOCK; VALUE; DIVIDEND; ADDITIONAL STOCK; RETIREMENT.—(a) The capital stock of each Federal intermediate credit bank shall be divided into shares of par value of $5 each and may be of such classes as its board of directors may determine with the approval of the Farm Credit Administration.

(b) Voting stock of each bank shall be held only by the production credit associations which stock shall not be transferred, pledged, or hypothecated except as provided in this title or as authorized under regulations of the Farm Credit Administration.

(c) The board of each bank shall from time to time increase its capital stock to permit the issuance of additional shares to production credit associations in such amounts as shall be determined by the board.

(d) Nonvoting stock may be issued to the Governor of the Farm Credit Administration, *and may be issued to and, notwithstanding the provisions of subsection (g) of this section, shall be retired for other Farm Credit System institutions as may be authorized by its board of directors and approved by the Farm Credit Administration.* Nonvoting stock may also be issued to production credit associations in such amounts as will permit the association to extend financial assistance to eligible persons other than farmers, ranchers, and producers or harvesters of aquatic products. Participation certificates, with a face value of $5, may be issued in lieu of such nonvoting stock when the bylaws of the bank so provide.

(e) Participation certificates also may be issued by a bank to financing institutions other than production credit associations which are eligible to borrow from or discount eligible paper with the bank.

(f) Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration other than the tax imposed by section 4.0(*c*) but noncumulative dividends may be payable on other capital and participation certificates in an amount not to exceed a per centum permitted under regulations of the Farm Credit Administration, in any year as determined by the board of directors. Such dividends may be in the form of stock and participation certificates or, when the Governor of the Farm Credit Administration holds no stock in the bank, in cash. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

(g) Each Federal intermediate credit bank, with the approval of the Farm Credit Administration, may determine the amount of the initial or additional stock in the bank to be subscribed for by the production credit associations in the farm credit district served by the bank in order to provide capital to meet the credit needs of the bank. The amount so determined shall be allotted among the associations in the district upon such basis that, as nearly as may be practicable, the sum of the stock already owned and the additional amount to be subscribed for by each association will be in the same proportion to the total amount of stock already owned and to be subscribed for by all of the associations in the district that the average indebtedness (loans and discounts) of each association to the bank during the immediately preceding three fiscal years is of the average of such indebtedness of all associations to the bank during such three-year period. Each association shall subscribe for stock in the bank in the amount so allotted to it. Such subscriptions shall be subject to call and payment therefor shall be made at such times and in such amounts as may be determined by the bank.

Whenever the relative amounts of stock in a bank owned by the associations differ substantially from the proportion indicated in the preceding paragraph, and additional subscriptions to stock through which such proportion could be reestablished are not contemplated, the bank, with approval of the Farm Credit Administration, may direct either separately or in combination such transfers, retirements, and reissuance of outstanding stock among the associations as will reestablish the aforesaid proportion as nearly as may be practicable. Outstanding stock which is retired for this purpose, except as otherwise approved by the Farm Credit Administration, shall be the oldest stock held by the association and the bank shall pay the association therefor at the **[**fair**]** book value thereof not exceeding par.

The banks may issue further amounts of participation certificates with the same rights, privileges, and conditions, for purchase by institutions other than production credit associations which are entitled to receive participation certificates from the bank as patronage refunds. Participation certificates held by other financing institutions may be transferred to other such institutions upon request of, or with the approval of the bank.

After all stock held by the Governor of the Farm Credit Administration has been retired, the bank may retire other stock at par and participation certificates at face amount under regulations of the Farm Credit Administration. Such other stock and participation certificates shall be retired without preference and in such manner that, unless otherwise approved by Farm Credit Administration, the oldest outstanding stock or certificates at any given time will be retired first. In case of liquidation or dissolution of any production credit association or other financing institution, the stock or participation certificates of the bank owned by such association or institution may be retired by the bank at the **[**fair**]** book value thereof, not exceeding par or face amount, as the case may be.

(h) **[**Except with regard to stock held by the Governor**]** *Except with regard to stock or participation certificates held by the Governor or other Farm Credit System institutions*, each Federal intermediate credit bank shall have a first lien on all stock and participation certificates it issues and on all allocated reserves and other equities for any indebtedness of the holder of such capital investments to the bank.

(i) In any case where the debt of a production credit association or other financing institution is in default, the bank may retire all or part of the capital investments in the bank held by such debtor at the **[**fair**]** book value thereof, not exceeding par or face amount as the case may be, in total or partial liquidation of the debt.

SEC. 2.3. LOANS; DISCOUNTS; PARTICIPATION; LEASING.—**[**(a) The Federal intermediate credit banks are authorized to make loans and extend other similar financial assistance to and discount for, or purchase from, any production credit association with its endorsement or guaranty, any note, draft, or other obligation presented by such association, and to participate with such association and one or more intermediate credit banks in the making of loans to eligible borrowers, all the foregoing to be secured by such collateral, if any, as may be required in regulations of the Farm Credit Administration. The banks may own and lease or lease with option to purchase, to persons eligible for assistance under this title, equipment needed in the operations of such persons.

(b) The Federal intermediate credit banks are authorized to discount for, or purchase from any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, and any association of agricultural producers engaged in the making of loans to farmers and ranchers, with its endorsement or guaranty, any note, draft, or other obligation the proceeds of which have been advanced or used in the first instance for any agricultural purpose, including the breeding, raising, fattening, or marketing of livestock; and to make loans and advances to any such financing institution secured by such collateral as may be approved by the Farm Credit Administration: *Provided*, That no such loan or advance shall be made upon the security of collateral other than notes or other such obligations of farmers and ranchers eligible for discount or purchase under the provisions of this section, unless such loan or advance is made to enable the financing institution to make or carry loans for any agricultural purpose.

(c) No paper shall be purchased from or discounted for any national bank, State bank, trust company or savings institution under subsection (b) if the amount of such paper added to the aggregate liabilities of such national bank, State bank, trust company or savings institution, whether direct or contingent (other than bona fide deposit liabilities), exceeds the lower of the amount of such liabilities permitted under the laws of the jurisdiction creating the same, or twice the paid-in and unimpaired capital and surplus of such national bank, State bank, trust company, or savings institution. No paper shall under this section be purchased from or discounted for any other corporation engaged in making loans for agricultural purposes including the raising, breeding, fattening, or marketing of livestock, if the amount of such paper added to the aggregate liabilities of such corporation exceeds the lower of the amount of such liabilities permitted under the laws of the jurisdiction creating the same, or ten times the paid-in and unimpaired capital and surplus of such corporation. It shall be unlawful for any national bank which is indebted to any Federal intermediate credit bank, upon paper discounted or purchased under subsection (b), to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitations herein contained.**]** (*a*) *The Federal intermediate credit banks are authorized to make loans and extend other similar financial assistance to, and to discount for or purchase from—*

(*1*) *any production credit association, or*

(*2*) *any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural pro-*

ducers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products.

any note, draft, or other obligation with its endorsement or guarantee, the proceeds of which note, draft, or other obligation have been advanced to persons and for purposes eligible for financing by production credit associations under section 2.15(a)(1), (2), and (3) of this Act.

(b) The Federal intermediate credit banks may participate with one or more production credit associations or intermediate credit banks in the making of loans to eligible borrowers and may participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act. The banks may own and lease or lease with option to purchase to persons eligible for assistance under this subchapter, equipment needed in the operations of such persons.

(c) No paper shall be purchased from or discounted for, and no loans shall be made or other similar financial assistance extended by a Federal intermediate credit bank to any entity identified in subsection (a) (1) and (2) of this section if the amount of such paper added to the aggregate liabilities of such entity, whether direct or contingent (other than bona fide deposit liabilities), exceeds ten times the paid-in and unimpaired capital and surplus of such entity or (in the case of financing institutions under subsection (a)(2) of this section) the amount of such liabilities permitted under the laws of the jurisdiction creating such institution, whichever is the lesser. It shall be unlawful for any national bank which is indebted to any Federal intermediate credit bank, upon paper discounted or purchased under subsection (a) of this section, to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitation herein contained.

(d) All of the loans, financial assistance, discounts, and purchases authorized by this section shall be subject to regulations of the Farm Credit Administration and shall be secured by collateral, if any, as may be required in such regulations. The regulations shall assure that such loans, financial assistance, discounts, and purchases are available on a reasonable basis to any financing institution authorized to receive such services under subsection (a)(2) of this section that (i) is significantly involved in lending for agricultural or aquatic purposes, (ii) demonstrates a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers, (iii) has limited access to national or regional capital markets, and (iv) does not use such services to expand its financing activities to persons and for purposes other than those authorized in section 2.15(a) (1), (2), and (3) of this Act. The regulations may authorize a Federal intermediate credit bank to charge reasonable fees for any commitment to extend service under this section to such a financing institution. For purposes of this subsection, a financing institution together with its subsidiaries and affiliates may be considered as one but such determination to consider such institution together with its subsidiaries and affiliates as one shall be made in the first instance by the bank and in the event of a denial by the bank of its services to a financ-

ing institution, thereafter by the Farm Credit Administration on a case-by-case basis with due regard to the total relationship of the financing institution, its subsidiaries, and affiliates.

(c) Nothing in this section shall require termination of discount relationships in existence on the effective date of the Farm Credit Act Amendments of 1980.

SEC. 2.4. TERMS.—[Loans, advances, or discounts made under section 2.3 shall be repayable in not more than seven years (fifteen years if made to producers or harvesters of aquatic products) from the time they are made or discounted by the Federal intermediate credit bank, and shall bear such rate or rates of interest or discount as the board of directors of the bank shall from time to time determine with the approval of the Farm Credit Administration, but the rates charged financing institutions other than production credit associations shall be the same as those charged production credit associations.] *Loans, advances, or discounts made under section 2.3 of this Act shall be repayable in not more than seven years (fifteen years if made to producers or harvesters of aquatic products) from the time they are made or discounted by the Federal intermediate credit bank, except that the district farm credit board, under regulations of the Farm Credit Administration, may approve policies permitting loans, advances, or discounts (other than those made to producers or harvesters of aquatic products) to be repayable in not more than ten years from the time they are made or discounted by such bank. Loans, advances, and discounts shall bear such rate or rates of interest or discount as the board of directors of the bank shall from time to time determine with the approval of the Farm Credit Administration as provided in section 4.17 of this Act, but the rates charged financing institutions shall be the same as those charged production credit associations.* In setting the rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserves and expenses of the bank and production credit associations, and providing services to borrowers from the bank and associations. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank. No obligation tendered for discount by a financing institution, without the approval of the Farm Credit Administration, shall be eligible for discount upon which the original borrower has been charged a rate of interest exceeding by more than 1½ per centum per annum the discount rate of the bank.

SEC. 2.5 SERVICES RELATED TO BORROWERS' OPERATIONS.—The Federal intermediate credit banks may provide technical assistance to borrowers, members, and applicants from the banks and production credit associations, including persons obligated on paper discounted by the bank, and may make available to them at their option such financial related services appropriate to their on-farm *and aquatic* operations as determined to be feasible by the board of directors of each district bank, under regulations of the Farm Credit Administration.

SEC. 2.6. NET EARNINGS.—DETERMINATION; ANNUAL APPLICATION; SURPLUS ACCOUNT; ABSORPTION OF NET LOSS.—(a) If, at the end of a fiscal year a Federal intermediate credit bank shall have stock outstanding held by the Governor of the Farm Credit Administration, such bank shall determine the amount of its net earnings after paying or providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such net earnings as follows: (1) to the restoration of the impairment, if any, of capital stock and participation certificates, as determined by its board of directors; (2) to the restoration of the amount of the impairment, if any, of the surplus account or allocated reserve account established by this subsection, as determined by its board of directors; (3) 25 per centum of any remaining net earnings shall be used to create and maintain an allocated reserve account; (4) a franchise tax shall be paid to the United States, as provided in section 4.0 of this Act; (5) reasonable unallocated contingency reserve account may be established and maintained; (6) dividends on stock held by production credit associations and on participation certificates may be declared as provided in section 2.2(f) of this title; and (7) any remaining net earnings shall be distributed as patronage refunds as provided in subsection (b) of this section.

Amounts applied to reserve account as provided in (3) above, either heretofore or hereafter, shall be allocated on the same patronage basis and have the same tax treatment as is provided in subsection (b) of this section for patronage refunds. At the end of any fiscal year that the allocated reserve account of any bank exceeds 25 per centum of its outstanding stock and participation certificates, such excess may be distributed, oldest allocations first, in stock to production credit associations and participation certificates issued as of the date of the allocations.

If and when the relative amounts of stock in a Federal intermediate credit bank owned by the production credit associations are adjusted to reestablish the proportion of such stock owned by each association, as provided in the first or second paragraphs of section 2.2(g) of this title, amounts in the reserve account that are allocated to production credit associations may be adjusted in the same manner, as far as practicable, to reestablish the holdings of the production credit associations in the allocated legal reserve accounts into substantially the same proportions as are their holdings of stock.

No part of the surplus account established by a Federal intermediate credit bank on January 1, 1957, consisting of its earned surplus account, its reserve for contingencies, and the surplus of the production credit corporation transferred to the bank, shall be distributed as patronage refunds or as dividends. In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves), such loss shall be absorbed by: first, charges to the unallocated reserve account; second, impairment of the allocated reserve account; third, impairment of the surplus other than that transferred from the production credit corporation of the district; fourth, impairment of surplus transferred from the production credit corporation of the district; fifth, impairment of stock and participation certificates held by production credit associations and participation certificates held by other financing institutions; and sixth, impairment of nonvoting stock.

(b) If at the end of a fiscal year a Federal intermediate credit bank shall have outstanding capital stock held by the Governor of the Farm Credit Administration, patronage refunds declared for that year shall be paid in stock to production credit associations and in participation certificates to other financing institutions borrowing from or discounting with the bank during the fiscal year for which such refunds are declared. The recipients of such patronage refunds shall not be subject to Federal income taxes thereon. All patronage refunds shall be paid in the proportion that the amount of interest earned by the bank on its loans to and discounts for each production credit association or other financing institution bears to the total interest earned by the bank on all such loans and discounts outstanding during the fiscal year. Each participation certificate issued in payment of patronage refunds shall be in multiples of $5 and shall state on its face the rights, privileges, and conditions applicable thereto. Patronage refunds shall not be paid to any other Federal intermediate credit bank, or to any Federal land bank or bank for cooperatives.

(c) If, at the end of a fiscal year a Federal intermediate credit bank shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net earnings of such bank shall, under regulations prescribed by the Farm Credit Administration, continue to be distributed on a cooperative basis with an obligation to distribute patronage dividends and with provision for sound, adequate capitalization to meet changing financing needs of production credit associations, other financial institutions eligible to discount paper with the bank, and other eligible borrowers, and prudent corporate fiscal management, to the end that the current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves. Such regulations may provide for the application **[**of less than 25 per centum**]** of net earnings after payment of operating expenses to the restoration or maintenance of the allocated reserve account, additions to unallocated contingency reserve account of not to exceed such per centum of net earnings as may be approved by the Farm Credit Administration, and provide for allocations to patrons not qualified under the Internal Revenue Code, and the payment of patronage in stock, participation certificates, or in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the Governor of the Farm Credit Administration, provision will be made for the payment of the franchise tax required in section 4.0.

(d) Such allocations of reserve account shall be subject to a first lien as additional collateral for any indebtedness of the holders thereof to the bank and in any case where such indebtedness is in default may, but shall not be required to, be retired and canceled for application on such indebtedness, and, in case of liquidation or dissolution of a holder thereof, such reserve account allocations may be retired, all as is provided for stock and participation certificates in section 2.2(g) of this title.

Sec. 2.7. Distribution of Assets on Liquidation.—In the case of liquidation or dissolution of any Federal intermediate credit bank, after payment or retirement, as the case may be, first, of all liabilities; second, of all stock held by the Governor of the Farm Credit Administration at par; third. of all stock owned by production credit associations at par and all participation certificates at face amount; any remaining assets of the bank shall be distributed as provided in this subsection. Any of the surplus established pursuant to section 2.6 (excluding that transferred from the production credit corporation of the district) which the Farm Credit Administration determines was contributed by financing institutions other than the production credit associations discounting with or borrowing from the bank on January 1. 1957. shall be paid to such institutions, or their successors in interest as determined by Farm Credit Administration. and the remaining portion of such surplus (including that transferred from the production credit corporation of the district) shall be paid to the holders of voting and nonvoting stock pro rata. The contribution of each such financing institution under the preceding sentence shall be computed on the basis of the ratio of its patronage to the total patronage of the bank from the date of organization of the bank to January 1. 1957. The allocated reserve established pursuant to section 2.6 shall be paid to the production credit associations and other financing institutions to which such reserve is allocated on the books of the bank. Any assets of the bank then remaining shall be distributed to the production credit associations and the holders of participation certificates pro rata.

SEC. 2.8. TAXATION.—Every Federal intermediate credit bank and
the capital. reserves. and surplus thereof and the income derived there-
from shall be exempt from Federal. State. municipal. and local taxa-
tion except taxes on real estate held by a Federal intermediate credi
bank to the same extent. according to its value. as other similar prop
erty held by other persons is taxed. The obligations held by the Fed
eral intermediate credit banks and the notes. bonds. debentures. an
other obligations issued by the banks shall be deemed to be instrumen
talities of the Government of the United States. and. as such. the
and the income therefrom shall be exempt from all Federal. Stat
municipal. and local taxation. other than Federal income tax liabilit
of the holder thereof under the Public Debt Act of 1941 (31 U.S.
742(a)).

SEC. 2.9. [Vacant.]

PART B—PRODUCTION CREDIT ASSOCIATIONS

SEC. 2.10. ORGANIZATION AND CHARTERS.—Each production cred
association chartered under section 20 of the Farm Credit Act
1933. as amended. shall continue as a federally chartered instrume
tality of the United States[.]. Production credit associations may
organized by ten or more farmers or ranchers or producers or h
vesters of aquatic products desiring to borrow money under the p
visions of this title. The proposed articles of association shall be f
warded to the Federal intermediate credit bank for the district
companied by an agreement to subscribe on behalf of the associat
for stock in the bank in such amounts as may be required by the ba
The articles shall specify in general terms the objects for which
association is formed. the powers to be exercised by it in carrying
the functions authorized by this part. and the territory it propose

serve. The articles shall be signed by persons desiring to form such an association and shall be accompanied by a statement signed by each such person establishing eligibility to borrow from the association in which he will become a stockholder. A copy of the articles of association shall be forwarded to the Governor of the Farm Credit Administration with the recommendations of the bank concerning the need for such an association in order to adequately serve the credit needs of eligible persons in the proposed territory and whether that territory includes any area described in the charter of another production credit association. The Governor for good cause shown may deny the charter. Upon approval of the proposed articles by the Governor and the issuance of a charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Governor shall have the power, under rules and regulations prescribed by him or by prescribing in the terms of the charter or by approval of bylaws of the association, to provide for the organization of the association, the initial amount of stock of the association, the territory within which its operations may be carried on, and to direct at any time such changes in the charter as he finds necessary for the accomplishment of the purposes of this Act.

Sec. 2.11. Board of Directors.—Each production credit association shall elect from its voting members a board of directors of such number, for such terms, with such qualifications, and in such manner as may be required by its bylaws.

Sec. 2.12. General Corporate Powers.—Each production credit association shall be a body corporate and, subject to supervision by the Federal intermediate credit bank for the district and the Farm Credit Administration, shall have power to—

(1) Have succession until termination in accordance with this Act or any other Act of Congress.

(2) Adopt and use a corporate seal.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Operate under the direction of its board of directors in accordance with this Act.

(7) Subscribe to stock of the bank.

(8) Purchase stock of the bank held by other production credit associations and stock of other production credit associations.

(9) Contribute to the capital of the bank or other production credit associations.

(10) Invest its funds as may be approved by the Federal intermediate credit bank under regulations of the Farm Credit Administration and deposit its current funds and securities with the Federal intermediate credit bank, a member bank of the Federal Reserve System, or any bank insured under the Federal Deposit Insurance Corporation, and may pay fees therefor and receive interest thereon as may be agreed.

(11) Buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System *and*

buy from and sell to such banks interests in loans and in other financial assistance extended and nonvoting stock, as may be authorized by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration.

(12) Borrow money from the Federal intermediate credit bank, and with the approval of such bank, borrow from and issue its notes or other obligations to any commercial bank or other financial institution.

(13) Make and participate in loans, accept advance payments, and provide services and other assistance as authorized in this title and charge fees therefor *and when authorized by the bank participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act.*

(14) Endorse and become liable on loans discounted or pledged to the Federal intermediate credit bank.

[(15) Enter into loss sharing agreements with the Federal intermediate credit bank and other production credit associations.]

(15) As may be authorized by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purposes.

(16) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired, its officers and employees elected or provided for, its property acquired, held, and transferred, its general business conducted, and the privileges granted it by law exercised and enjoyed.

(17) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this Act, define their duties, and require surety bonds or make other provisions against losses occasioned by employees. No director shall, within one year after the date when he ceases to be a member of the board, be elected or designated a salaried employee of the association on the board of which he served.

(18) Elect by its board of directors a loan committee with power to approve applications for membership in the association and loans or participations or, with the approval of the bank, delegate the approval of applications for membership and loans or participations within specified limits to other committees or to authorized officers and employees of the association.

(19) Perform any functions delegated to it by the bank or the Farm Credit Administration.

(20) Exercise by its board of directors or authorized officers or employees, all such incidental powers as may be necessary or expedient to carry on the business of the association.

SEC. 2.13. CAPITAL STOCK: CLASSES OF STOCK; TRANSFERS; EXCHANGE; AND DIVIDENDS.—(a) A production credit association may issue voting stock, nonvoting stock, preferred stock, participation certificates, and provide for an equity reserve. Holders of stock, participation certificates, and equity reserve shall have such rights not inconsistent with the provisions of this section, as are set forth in the bylaws of the association. Stock shall be divided into shares of $5 par value each, and participation certificates shall have a face value of $5 each.

(b) Voting stock may be purchased only by farmers and ranchers, or producers or harvesters of aquatic products, who are eligible to borrow from the association. Each holder of voting stock shall be entitled to no more than one vote except as otherwise provided in subsection (d) hereof. No voting stock or any interest therein or right to receive dividends thereon shall be transferred by act of the parties or by operation of law, except to another person eligible to hold voting stock, and then only as provided in the bylaws.

(c) Nonvoting stock may be issued to the Governor of the Farm Credit Administration and to other investors.

(d) Preferred stock, which shall be nonvoting, may be issued to the Governor and to other investors when authorized by a majority vote of the outstanding shares of voting stock, by a majority vote of the outstanding shares of the nonvoting stock, and by a majority vote of the outstanding shares of preferred stock, except that all stock held by the Governor shall be excluded from voting hereunder. For the purpose of this subsection only, the holders of such stock shall be entitled to one vote, in person or by written proxy, for each share of stock held. The authorization to issue preferred stock shall state the privileges, restrictions, limitations, dividend rights (either cumulative or noncumulative) redemption rights, preferences, and other qualifications affecting said stock, and the total amount of the authorized issue to which it belongs.

(e) Participation certificates may be issued to persons eligible to borrow from the association to whom voting stock is not to be issued *or in lieu of nonvoting stock.*

(f) Each borrower from the association shall be required to own at the time the loan is made voting stock or participation certificates as provided in the bylaws of the association, in an amount equal in **[**fair**]** book value (not exceeding par or face amount, as the case may be), as determined by the association, to $5 per $100 or fraction thereof of the amount of the loan. Such stock and participation certificates shall not be canceled or retired upon payment of the loan or otherwise except as may be provided in the bylaws. **[**Notwithstanding any other provision of this section, for a loan in which an association participates with a commercial bank or other financial institution other than a Federal intermediate credit bank or another production credit association, the requirement that the borrower own stock or participation certificates shall apply only to the portion of the loan which is retained by the association.**]** *Notwithstanding any other provisions of this section, for a loan in which an association participates with a commercial bank or other financial institution other than a Farm Credit System institution, nonvoting stock or participation certificates may be issued to the commercial bank or other financial institution in satisfaction of the requirement that the borrower own stock or participation certificates, which requirement shall apply only to the portion of the loan which is retained by the association.*

(g) Voting stock shall, within two years after the holder ceases to be a borrower, be converted into nonvoting stock at the **[**fair**]** book value thereof, not exceeding par. Consistent with the provisions of this part, and as provided in the bylaws of the association, each class of stock and participation certificates shall be convertible into any other class of stock (except preferred stock) and into participation certificates.

(h) As a further means of providing capital, an association may, as provided in its bylaws, and with the approval of the bank, require borrowers to purchase stock or participation certificates in addition to that required in subsection (f) hereof, or invest in the equity reserve, in an aggregate amount not exceeding $5 per $100 or fraction thereof of the amount of the loan. Any portion of the amounts invested under this subsection which is no longer required for the purposes of the association may be returned to the owners thereof by revolving or retirement in accordance with its bylaws.

(i) Dividends shall be paid on preferred stock in accordance with the authorization of the stockholders to issue each stock. Dividends on stock, other than preferred stock, and on participation certificates may be paid by an association as provided in its bylaws at such rate or rates as are approved by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration, and may be paid, upon such approval, even though the amount in the surplus accounts is less than the minimum aggregate amount prescribed by the bank as provided in section 2.14.

(j) [Except with regard to stock held by the Governor] *Except with regard to stock or participation certificates held by the Governor or other Farm Credit System institutions*, each production credit association shall have a first lien on stock and participation certificates it issues, allocated surplus, and on investments in equity reserve, for any indebtedness of the holder of such capital investments and, in the case of equity reserve, for charges for association losses in excess of reserves and surplus.

(k) In any case where the debt of a borrower is in default, the association may retire all or part of the capital investments in the association held by such debtor at the [fair] book value thereof, not exceeding par or face amount, as the case may be, in total or partial liquidation of the debt.

SEC. 2.14. APPLICATION OF EARNINGS; RESTORATION OF CAPITAL IMPAIRMENT; AND SURPLUS ACCOUNT.—(a) Each production credit association at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets in an amount equal to one-half of 1 per centum of the loans outstanding at the end of the fiscal year to the extent that earnings in such year in excess of other operating expenses permit, until such reserves equal or exceed 3½ per centum of the loans outstanding at the end of the fiscal year, beyond which 3½ per centum further additions to such reserves are not required but may be made) first to the restoration of the impairment, if any, of capital; and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Federal intermediate credit bank.

(b) When the bylaws of an association so provide, available net earnings at the end of any fiscal year may be distributed on a patronage basis in stock, participation certificates, or in cash, except that when the Governor holds any stock in an association the cash distribution shall be such percentage of the patronage refund as shall be determined under regulations of the Farm Credit Administration. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

SEC. 2.15. SHORT- AND INTERMEDIATE-TERM LOANS; PARTICIPATION; OTHER FINANCIAL ASSISTANCE; TERMS; CONDITIONS; INTEREST, SECURITY.—(a) Each production credit association, under rules and regulations prescribed by the board of directors of the Federal intermediate credit bank of the district and approved by the Farm Credit Administration, may make, guarantee, or participate with other lenders in short- and intermediate-term loans and other similar financial assistance to [(1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural purposes and other requirements of such borrowers,] *(1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural or aquatic purposes and other requirements of such borrowers, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products: Provided, That the borrower's operations shall supply at least 20 per centum, or such larger per centum that is required by the supervising bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended,* (2) rural residents for housing financing in rural areas, under regulations of Farm Credit Administration, and (3) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs. Rural housing financed under this title shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, planned or recommended for the rural area where it is located. The aggregate of such housing loans in an association to persons other than farmers or ranchers shall not exceed 15 per centum of the outstanding loans at the end of its preceding fiscal year except upon prior approval by the Federal intermediate credit bank of the district. The aggregate of such housing loans in any farm credit district shall not exceed 15 per centum of the outstanding loans of all associations in the district at the end of the preceding fiscal year. For rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants. Each association may own and lease, or lease with option to purchase, to stockholders of the association equipment needed in the operations of the stockholder.

(b) Loans authorized in subsection (a) hereof shall bear such rate or rates of interest as are determined under regulations prescribed by the board of the bank with the approval of the Farm Credit Administration *as provided in section 4.17 of this Act,* and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such regulations. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the association, necessary reserves and expenses of the association, and services provided to borrowers and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rate or rates currently being charged by the association. Such regulations may require prior approval of the bank or of Farm Credit Administration on certain classes of loans; and may authorize a continuing commitment to a borrower of a line of credit.

Sec. 2.16. Other Services.—Each production credit association may provide technical assistance to borrowers, applicants, and members and may make available to them at their option such financial related services appropriate to their on-farm *and aquatic* operations as is determined feasible by the board of directors of each district bank, under regulations prescribed by the Farm Credit Administration.

Sec. 2.17. Taxation.—Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority. Such associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, territorial, or local taxing authority; except that interest on the obligations of such associations shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to the Public Debt Act of 1941 (31 U.S.C. 742(a)) and except that any real and tangible personal property of such associations shall be subject to Federal, State, territorial, and local taxation to the same extent as similar property is taxed. The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the production credit associations is held by the Governor of the Farm Credit Administration.

TITLE III—BANKS FOR COOPERATIVES

Sec. 3.0. Establishment; Titles; Branches.—The banks for cooperatives established pursuant to sections 2 and 30 of the Farm Credit Act of 1933, as amended, shall continue as federally chartered instrumentalities of the United States. Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this title, as may be necessary or expedient to implement this Act. Unless an existing bank for cooperatives is merged with one or more other such banks under section 4.10 of this Act, there shall be a bank for cooperatives in each farm credit district and a Central Bank for Cooperatives. A bank for cooperatives may include in its title the name of the city in which it is located or other geographical designation. The Central Bank for Cooperatives may be located in such place as its board of directors may determine with the approval of the Farm Credit Administration. When authorized by the Farm Credit Administration each bank for cooperatives may establish such branches or other offices as may be appropriate for the effective operation of its business.

Sec. 3.1. Corporate Existence; General Corporate Powers.—Each bank for cooperatives shall be a body corporate and, subject to supervision by the Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make loans and commitments for credit, provide services and other assistance as authorized in this Act, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, any vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act, define their duties and require surety bonds or make other provisions against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, or agents elected or provided for; its property acquired, held, and transferred; its loans made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11) Participate in loans under this title with one or more other banks for cooperatives and with commercial banks and other financial institutions upon such terms as may be agreed among them *and participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this Act.*

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System *or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act or, to the extent necessary to facilitate transactions which may be financed under section 3.7(b) of this Act, any other financial organization, domestic or foreign, as may be authorized by its board of directors and approved by the Farm Credit Administration*, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13) (*A*) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized by the Farm Credit Administration.

(B) As may be authorized by its board of directors and approved by the Farm Credit Administration, buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock.

(C) As may be authorized by its board of directors and approved by the Farm Credit Administration, and solely for the purpose of obtaining credit information and other services needed to facilitate transactions which may be financed under section 3.7(b) of this Act, invest in ownership interests in foreign business entities that are principally engaged in providing credit information to and performing such servicing functions for their members in connection with the members' international activities.

(14) Conduct studies and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Perform any function delegated to it by the Farm Credit Administration.

(17) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(18) As may be authorized by the board of directors and approved by the Farm Credit Administration, maintain credit balances and pay or receive fees or interest thereon, for the purpose of assisting in the transfer of funds to or from parties to transactions which may be financed under section 3.7(b) of this Act: Provided, however, That nothing herein shall authorize the banks for cooperatives to engage in the business of accepting domestic deposits.

(19) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose.

SEC. 3.2. BOARD OF DIRECTORS.—(a) In the case of a district bank for cooperatives, the board of directors shall be the farm credit district board and in the case of the Central Bank for Cooperatives shall be a separate board of not more than thirteen members, one from each farm credit district and one at large. One district director of the Central Bank Board shall be elected by each district farm credit board and the member at large shall be appointed by the Governor with the advice and consent of the Federal Farm Credit Board.

(b) For the purposes of this section the provisions of sections 5.1 (b) and (c), 5.4, 5.5, and 5.6 shall apply to and shall be the authority of the Central Bank for Cooperatives the same as though it were a district bank.

SEC. 3.3. BANK FOR COOPERATIVES STOCK; VALUE; CLASSES OF STOCK; VOTING; EXCHANGE.—(a) The capital stock of each bank for cooperatives shall be in such amount as its board determines, with the approval of Farm Credit Administration, is required for the purpose of providing adequate capital to permit the bank to meet the credit needs of borrowers from the bank and such amounts may be increased or decreased from time to time in accordance with such needs.

(b) The capital stock of each bank shall be divided into shares of par value of $100 each and may be of such classes as the board may determine with the approval of the Farm Credit Administration. Such stock may be issued in fractional shares.

(c) Voting stock may be issued or transferred to and held only by (i) cooperative associations eligible to borrow from the banks and (ii) other banks for cooperatives, and shall not be otherwise transferred, pledged, or hypothecated except as consented to by the issuing bank under regulations of the Farm Credit Administration.

(d) Each holder of one or more shares of voting stock which is eligible to borrow from a bank for cooperatives shall be entitled only to one vote and only in the affairs of the bank in the district in which its principal office is located unless otherwise authorized by the Farm Credit Administration, except that if such holder has not been a borrower from the bank in which it holds such stock within a period of two years next preceding the date fixed by the Farm Credit Administration prior to the commencement of voting, it shall not be entitled to vote.

(e) Nonvoting investment stock may be issued in such series and in such amounts as may be determined by the board and approved by the Farm Credit Administration and, except for stock held by the Governor, may be exchanged for voting stock or sold or transferred to any person subject to the approval of the issuing bank.

(f) Participation certificates may be issued to parties to whom voting stock may not be issued.

SEC. 3.4. DIVIDENDS.—Dividends may be payable only on nonvoting investment stock, other than stock held by the Governor of the Farm Credit Administration, if declared by the board of directors of the bank.

SEC. 3.5. RETIREMENT OF STOCK.—**[**Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 4.0(b) before any other outstanding voting or nonvoting stock shall be retired except as may be otherwise authorized by Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock retired in response to a call, reserving the right to have such stock included in the next call for retirement.**]** *Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 4.0(b) of this Act before any other outstanding voting or nonvoting stock or participation certificates shall be retired except as may be otherwise authorized by the Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock and participation certificates may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock or participation certificates retired in response to a call, reserving the right to have such stock or participation certificates included in the next call for retirement.* When the requirements of section 4.0(b) have been met, voting stock may also be retired at [fair book value not exceeding] par, on call or on such revolving basis as the board may determine with approval of the Farm Credit Administration with due regard for its total capital needs: *Provided, however*, That all equities in the district banks issued or allocated with respect to the year of the enactment of this Act and prior years shall be retired on a revolving basis according to the year of issue with the oldest outstanding equities being first retired. Equities issued for subsequent years shall not be called or retired until equities described in the preceding sentence of this proviso have been retired.

SEC. 3.6. GUARANTY FUND SUBSCRIPTIONS IN LIEU OF STOCK.—If any cooperative association is not authorized under the laws of the State in which it is organized to take and hold stock in a bank for cooperatives, the bank shall, in lieu of any requirement for stock purchase, require the association to pay into or have on deposit in a guaranty fund, or the bank may retain out of the amount of the loan and credit to the guaranty fund account of the borrower, a sum equal to the amount of stock which the association would otherwise be required to own. Each reference to stock of the banks for cooperatives in this Act shall include such guaranty fund equivalents. The holder of the guaranty fund equivalent and the bank shall each be entitled to the same rights and obligations with respect thereto as the rights and obligations associated with the class or classes of stock involved.

SEC. 3.7. LENDING POWER.—(*a*) The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance, including but not limited to discounting notes and other obligations, guarantees, *currency exchange necessary to service individual transactions that may be financed under subsection (b) of this section*, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder *and may make or participate in loans or commitments and extend other technical and financial assistance to other domestic parties for the acquisition of equipment and facilities to be leased to such stockholders for use in their operations in the United States.*

(b) A bank for cooperatives is authorized to make or participate in loans and commitments to, and to extend other technical and financial assistance to (1) a domestic or foreign party with respect to its transactions with an association which is a voting stockholder of the bank for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, and (2) a domestic or foreign party in which such an association has at least the minimum ownership interest approved under regulations of the Farm Credit Administration for the purpose of facilitating the association's export or import operations of the type described in clause

(1) of this subsection: Provided, That a bank for cooperatives determines, under regulations of the Farm Credit Administration, that the voting stockholder will benefit substantially as a result of such loan, commitment, or assistance.

(c) Loans, commitments, and assistance authorized by subsection (b) of this section shall be extended in accordance with policies adopted by the board of directors of the bank under regulations of the Farm Credit Administration.

(d) The regulations of the Farm Credit Administration implementing subsection (b) of this section and the other provisions of this title relating to the authority under subsection (b) of this section may not confer upon the banks for cooperatives powers and authorities greater than those specified in this title. The Farm Credit Administration shall, during the formulation of such regulations, closely consult on a continuing basis with the Board of Governors of the Federal Reserve System to ensure that such regulations conform to national banking policies, objectives, and limitations.

(e) Notwithstanding any other provision of this title, the banks for cooperatives shall not make or participate in loans or commitments for the purpose of financing speculative futures transactions by eligible borrowers in foreign currencies.

SEC. 3.8 ELIGIBILITY.—Any association of farmers, producers [,] or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm *or aquatic* business services or services to eligible cooperatives and conforms to either of the two following requirements:

(a) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, [or farm business services] *farm or aquatic business services, or services to eligible cooperatives* with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

[(d) a percentage of the voting control of the association not less than 80 per centum (70 per centum in the case of rural electric, telephone and public utility cooperatives), or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;]

(d) a percentage of the voting control of the association not less than 80 per centum (60 per centum (1) in the case of rural electric, telephone, public utility, and service cooperatives; (2) in the case of local

farm supply cooperatives which have historically served needs of the community that would not adequately be served by other suppliers and have experienced a reduction in the percentage of farmer membership due to changed circumstances beyond their control such as, but not limited to, urbanization of the community; and (3) in the case of local farm supply cooperatives which provide or will provide needed services to a community and which are or will be in competition with a cooperative specified in paragraph (2)) or, with respect to any type of association or cooperative, such higher percentage as established by the district board, is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein; shall be eligible to borrow from a bank for cooperatives.

SEC. 3.9. OWNERSHIP OF STOCK BY BORROWERS.—(a) [Each borrower at the time a loan is made by a bank for cooperatives shall own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan.] *Each borrower entitled to hold voting stock shall, at the time a loan is made by a bank for cooperatives, own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan.* Such additional ownership requirements may be based on the face amount of the loan, the outstanding loan balance or on a percentage of the interest payable by the borrower during any year or during any quarter thereof, or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank designated by the Farm Credit Administration.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

SEC. 3.10. INTEREST RATES; SECURITY; LIEN; CANCELLATION; AND APPLICATION ON INDEBTEDNESS.—(a) Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration *as provided in section 4.17 of this Act.* In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

(b) Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

(c) Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

(d) In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair **[**book**]** *market* value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a district bank in another district bank on account of such indebtedness, shall be retired or equitably adjusted. *In no event shall the bank's equities be retired or canceled if the retirement or cancellation would adversely affect the bank's capital structure, as determined by the Farm Credit Administration.*

SEC. 3.11. EARNINGS AND RESERVES; APPLICATIONS OF SAVINGS.—(a) Each bank for cooperatives, at the end of each fiscal year when said bank shall have stock outstanding held by the Governor of the Farm Credit Administration, shall determine the amount of its net savings after paying or providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such savings as follows: (1) To the restoration of the amount of the impairment, if any, of capital stock, as determined by its board of directors; (2) 25 per centum of any remaining net savings shall be used to create and maintain a surplus account; (3) it shall next pay to the United States a franchise tax as provided in section 4.0 of this Act; (4) reasonable contingency reserves may be established; (5) dividends on investment stock may be declared as provided in this title; and (6) any remaining net savings shall be distributed as patronage refunds as provided in subsection (c) or (d) of this section: *Provided*, That any patronage refunds received by a district bank from any other bank for cooperatives shall be excluded from net savings of the district bank for the purpose of computing such franchise tax. Amounts applied as provided in (2) above after January 1, 1956, shall be allocated on a patronage basis approved by the Farm Credit Administration. At the end of any fiscal year any portion of the reserve established under (4) above which is no longer deemed necessary shall be transferred to the surplus account and, if the surplus account of any such bank for cooperatives exceeds 25 per centum of the sum of all its outstanding capital stock, the bank may distribute in the same manner as a patronage refund any part or all of such excess which has been allocated: *Provided*, That any surplus and contingency reserve shown on the books of the banks as of January 1, 1956, shall not be distributed as patronage refunds. In making such distributions except as otherwise provided in section 3.5 and distributions by the Central Bank, the oldest outstanding allocations shall be distributed first. Whenever used in this title, the words "surplus account" as applied to any bank for cooperatives shall mean any surpluses and contingency reserves shown on the books of the bank as of January 1, 1956, and any amounts accumulated as allocated or unallocated surplus after said date. Said surplus account shall be divided to show the amounts thereof subject to allocation as provided in this subsection and may be further subdivided as prescribed by the Farm Credit Administration.

(b) Whenever at the end of any fiscal year a bank for cooperatives shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net savings shall, under regulations prescribed by the Farm Credit Administration, continue to be applied on a cooperative basis with provision for sound, adequate capitalization to meet the changing financing needs of eligible cooperative borrowers and prudent corporate fiscal management, to the end that current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves related to the year's operations and the remaining net savings shall be distributed as patronage refunds as provided in subsections (c) and (d) of this section. Such regulations may provide for application [of less than 25 per centum] of net savings to the restoration or maintenance of an allocated surplus account, reasonable additions to unallocated surplus, or to unallocated reserves [of not to exceed such per centum of net savings] after payment of operating expenses as may be approved by the Farm Credit Administration, and provide for allocations to patrons not qualified under the Internal Revenue Code, or payment of such per centum of patronage refunds in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the United States, provision will be made for payment of franchise taxes required in section 4.0.

(c) [The net savings of each district bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsections (a) or (b) of this section, whichever is applicable, shall be paid in stock or in cash, or both, as determined by the board, as patronage refunds to borrowers of the fiscal year for which such patronage refunds are distributed.] *The net savings of each district bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsections (a) or (b) of this section, whichever is applicable, shall be paid in stock, participation certificates, or cash, or in any of them, as determined by the board, as patronage refunds to borrowers to whom such refunds are payable who are borrowers of the fiscal year for which such patronage refunds are distributed.* Except as provided in subsection (d) below, all patronage refunds shall be paid in proportion that the amount of interest and service fees on the loans to each borrower during the year bears to the interest and service fees on the loans of all borrowers during the year or on such other proportionate patronage basis as the Farm Credit Administration may approve.

(d) The net savings of the Central Bank for Cooperatives after the earnings for the fiscal year have been applied in accordance with subsections (a) or (b) whichever is applicable, shall be paid in stock or cash, or both, as determined by the board, as patronage refunds to the district banks on the basis of interests held by the Central Bank in loans made by the district banks and upon any direct loans made by the Central Bank to cooperative associations, or on such other proportionate patronage basis as the Farm Credit Administration may approve. In cases of direct loans, such refund shall be paid to the district bank or banks which issued their stock to the borrower incident to such loans, and the district bank or banks shall issue a like amount of patronage refunds to the borrower.

(e) In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any applicable reserves), such loss may be carried forward or carried back, if appropriate, or otherwise shall be absorbed by charges to unallocated reserve or surplus accounts established after the date of enactment of this Act; charges to allocated contingency reserve account; charges to allocated surplus accounts; charges to other contingency reserve and surplus accounts; the impairment of voting stock; or the impairment of all other stock.

(f) Notwithstanding any other provisions of this section any costs or expenses attributable to a prior year or years but not recognized in determining the net savings for such year or years may be charged to reserves or surplus of the bank or to patronage allocations for such years, as may be determined by the board of directors.

(g) For any year that a bank for cooperatives is subject to Federal income tax, it may pay in cash such portion of its patronage refunds as will permit its taxable income to be determined without taking into account savings applied as allocated surplus, allocated contingency reserves, and patronage refunds under subsection (a) or (b) of this section.

SEC. 3.12. DISTRIBUTION OF ASSETS AND LIQUIDATION OR DISSOLUTION.—In the case of liquidation or dissolution of any bank for cooperatives, after payment or retirement, first of all liabilities; second, of all capital stock issued before January 1, 1956, at par, any stock held by the Governor of the Farm Credit Administration at par, and all nonvoting stock at par; and third, all voting stock at par; any surplus and reserves existing on January 1, 1956, shall be paid to the holders of stock issued before that date, stock held by the Governor of the Farm Credit Administration, and voting stock pro rata; and any remaining allocated surplus and reserves shall be distributed to those entities to which they are allocated on the books of the bank, and any other remaining surplus shall be paid to the holders of outstanding voting stock. If it should become necessary to use any surplus or reserves to pay any liabilities or to retire any capital stock, unallocated reserves or surplus, allocated reserves and surplus shall be exhausted in accordance with rules prescribed by Farm Credit Administration.

SEC. 3.13. TAXATION.—Each bank for cooperatives and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such bank shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority. Such banks, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, territorial, or local taxing authority; except that interest on the obligations of such banks shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to the Public Debt Act of 1941 (31 U.S.C. 742(a)) and except that any real and tangible personal property of such banks shall be subject to Federal, State, territorial, and local taxation to the same extent as similar property is taxed. The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the bank for cooperatives is held by the Governor of the Farm Credit Administration.

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

SEC. 4.0. STOCK PURCHASED BY GOVERNOR; RETIREMENT; FRANCHISE TAX; REVOLVING FUND.—(a) The Federal land banks, the Federal intermediate credit banks, the banks for cooperatives, and, subject to section 2.13(d), the production credit associations may issue stock which may be purchased by the Governor of the Farm Credit Administration on behalf of the United States as a temporary investment in the stock of the institution to help one or several of the banks or associations to meet emergency credit needs of borrowers. The ownership of such stock shall be deemed to not change the status of ownership of the banks or associations, but, during the time such stock is outstanding, the pertinent provisions of the Government Corporation Control Act shall be applicable.

(b) The Governor shall require the retirement of such stock at such time as in his opinion the bank or association has resources available therefor and the need for such temporary investment is reduced or no longer exists. If the Governor determines that a production credit association does not have resources available to retire stock held by him, but in his judgment, the Federal intermediate credit bank of the district has resources available to do so, the Governor may require such bank to invest in an equivalent amount of nonvoting stock of said association and the association then shall retire the stock held by the Governor.

(c) For any year or part thereof in which the Governor holds any stock in a bank of the System, such institution after complying with sections 1.17, 2.6, 2.14, 3.11, respectively, shall pay to the United States as a franchise tax a sum equal to the lower of 25 per centum of its net earnings for the year before establishing any contingency reserves or declaring any dividends or patronage distribution, not exceeding a rate of return on such temporary investment calculated at a rate determined by the Secretary of the Treasury equal to the average annual rate of interest on all public issues of debt obligations of the United States issued during the fiscal year ending next before such tax is due, multiplied by the percentage that the number of days such stock is outstanding is of three hundred and sixty-five days. Such payments shall be deposited in the miscellaneous receipts in the Treasury.

SEC. 4.1. REVOLVING FUNDS AND GOVERNMENT DEPOSITS.—(a) The revolving fund established by Public Law 87–343, 75 Stat. 758, as amended, shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any Federal intermediate credit banks or production credit associations as provided in section 4.0 and for any other purpose authorized by said Act. Funds received from the partial or the full retirement of such investments shall be deposited in this revolving fund.

(b) The revolving fund established by Public Law 87–494, 76 Stat. 109, as amended, shall be available at the request of the Governor of the Farm Credit Administration for his temporary investment in the stock of any bank for cooperatives as provided in section 4.0 of this Act. Funds received from the partial or full retirement of such investments shall be deposited in this revolving fund.

(c) The Secretary of the Treasury is authorized, in his discretion, upon the request of the Farm Credit Administration, to make deposits for the temporary use of any Federal land bank, out of any money in the Treasury not otherwise appropriated. Such Federal land bank shall issue to the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits, to be secured by bonds or other collateral, to the satisfaction of the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such land bank at the discretion of the Secretary of the Treasury. The aggregate of all sums so deposited by the Secretary of the Treasury shall not exceed the sum of $6,000,000 at any one time.

SEC. 4.2. POWER TO BORROW; ISSUE NOTES, BONDS, DEBENTURES, AND OTHER OBLIGATIONS.—Each of the banks of the System, in order to obtain funds for its authorized purposes, shall have power, subject to supervision of the Farm Credit Administration, and subject to the limitations of paragraph (e) of this section, to—

(a) Borrow money from or loan to any other institution of the System, borrow from any commercial bank or other lending institution, issue its notes or other evidence of debt on its own individual responsibility and full faith and credit, and invest its excess funds in such sums, at such times, and on such terms and conditions as it may determine.

(b) Issue its own notes, bonds, debentures, or other similar obligations, fully collateralized as provided in section 4.3(b) by the notes, mortgages, and security instruments it holds in the performance of its functions under this Act in such sums, maturities, rates of interest, and terms and conditions of each issue as it may determine with approval of the Governor.

(c) Join with any or all banks organized and operating under the same title of this Act in borrowing or in issuance of consolidated notes, bonds, debentures, or other obligations as may be agreed with approval of the Governor.

(d) Join with other banks of the System in issuance of System-wide notes, bonds, debentures, and other obligations in the manner, form, amounts, and on such terms and conditions as may be agreed upon with approval of the Governor. Such System-wide issue by the participating banks and such participations by each bank shall not exceed the limits to which each such bank is subject in the issuance of its individual or consolidated obligations and each such issue shall be subject to approval of the Governor: *Provided, however*, There shall be no issues of System-wide obligations without the concurrence of the boards of directors of each of the 12 districts and the Central Bank for Cooperatives and the approval of the Governor for such issues shall be conditioned on and be evidence of the compliance with this provision.

(e) No bank or banks shall issue notes, bonds, debentures, or other obligations individually or in concert with one or more banks of the System other than through their fiscal agent under any provision of this Act except under subsection (a) of this section: *Provided*, That any bank or banks may issue investment bonds or like obligations other than through the fiscal agent if the interest rate is not in excess of the interest allowable on savings deposits of commercial banks of comparable amounts and maturities under Federal Reserve regulation on its member banks.

SEC. 4.3. AGGREGATE OF OBLIGATIONS; COLLATERAL.—(a) No issue of long-term notes, bonds, debentures, or other similar obligations by a bank or banks shall be approved in an amount which, together with the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of all the banks which will be primarily liable on the proposed issue, or such lesser amount as the Farm Credit Administration shall establish by regulation.

(b) Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this Act, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

SEC. 4.4. LIABILITY OF BANKS; UNITED STATES NOT LIABLE.—(a) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same title of this Act. Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make. Such calls shall be made first upon the other banks operating under the same title of this Act as the defaulting bank, and second upon banks operating under other titles of this Act, taking into consideration the capital, surplus, bonds, debentures, or other obligations which each may have outstanding at the time of such assessment.

(b) Each bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a), and in the case of consolidated or System-wide obligations shall authorize the Governor to execute such long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated or System-wide issue is approved, the notes, bonds, debentures, or other obligations shall be executed by the Governor and the banks shall be liable thereon as provided herein.

(c) The United States shall not be liable or assume any liability directly or indirectly thereon.

SEC. 4.5. FINANCE COMMITTEE.—There shall be established a finance committee for the banks organized and operated under titles I, II, and III, respectively, of this Act, composed of the [presidents of each bank] *president of each bank or the president's designee.* Each such committee may have such officers and such subcommittees for such terms and such representation as may be agreed upon between the banks. When appropriate to the performance of their function, the [subcommittee's] *subcommittees* or representatives thereof, of the various banks shall constitute such subcommittees in connection with System-wide issues of obligations. The finance committees and subcommittees acting for the banks of the System shall, subject to approval of the Governor, determine the amount, maturities, rates of interest, and participation by the several banks in each issue of joint, consolidated, or System-wide obligations.

SEC. 4.6. BONDS AS INVESTMENTS.—The bonds, debentures, and other similar obligations issued under the authority of this Act shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits.

SEC. 4.7. PURCHASE AND SALE BY FEDERAL RESERVE SYSTEM.—Any member of the Federal Reserve System may buy and sell bonds, debentures, or other similar obligations issued under the authority of this Act and any Federal Reserve bank may buy and sell such obligations to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under section 355 of title 12, United States Code.

SEC. 4.8. PURCHASE AND SALE OF OBLIGATIONS.—Each bank of the System may purchase its own obligations and the obligations of other banks of the System and may provide for the sale of obligations issued by it, consolidated obligations, or System-wide obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

SEC. 4.9. FISCAL AGENCY.—A fiscal agency shall be established by the banks for such of their functions relating to the issuance, marketing, and handling of their obligations, and interbank or intersystem flow of funds as may from time to time be required.

PART B—DISSOLUTION AND MERGER

SEC. 4.10. MERGER OF SIMILAR BANKS.—Banks organized or operating under titles I, II, or III, respectively, may upon majority vote cast by their voting stockholders and contributors to their guaranty funds in accordance with the voting strength provisions of section 5.2(c) of this Act relating to elections of directors of the district boards, and with the approval of the Farm Credit Administration, merge with banks in other districts operating under the [name] *same* title of this Act.

SEC. 4.11. BOARD OF DIRECTORS FOR MERGED BANK.—In the event of merger of two or more banks to serve borrowers in more than one farm credit district, a separate board of directors shall be created for the resulting merged bank. The board thus created shall be composed of two directors elected by each of the district boards involved, at least one of which from each district shall have been elected by the eligible stockholders of or subscribers to the guaranty fund of the merging banks, and one director appointed by the Governor with the advice and consent of the Federal Farm Credit Board. Notwithstanding the foregoing, the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors selected in a different manner. The board so constituted shall have such separate and distinct powers, functions, and duties as are normally exercised by a district board related to the operations and policies of the banks which were merged.

SEC. 4.12. DISSOLUTION; VOLUNTARY LIQUIDATION; MERGERS; RECEIVERSHIPS; AND CONSERVATORS.—(a) No institution of the System shall go into voluntary liquidation without the consent of the Farm Credit Administration and with such consent may liquidate only in accordance with regulations prescribed by the Farm Credit Administration. Associations may voluntarily merge with other like associations upon the vote of a majority of each of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the supervising bank and the Farm Credit Administration. The Federal Farm Credit Board may require such merger whenever it determines, with the concurrence of the district board, that an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with this Act.

(b) Upon default of any obligation by any institution of the System, such institution may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Governor and the proceedings thereon shall be in accordance with regulations of the Farm Credit Administration regarding such insolvencies.

PART C—RIGHTS OF APPLICANTS

SEC. 4.13. NOTICE OF ACTION ON APPLICATION.—Every applicant for a loan from an institution of the System shall be entitled to prompt notice of action on his application, and, if the loan applied for is reduced or denied, the reason for such action.

SEC. 4.14. RECONSIDERATION.—Any applicant who has reason to believe that the action on his application by an association failed to take into account facts pertinent to his application, or has misinterpreted or failed to properly apply the applicable law or rules and regulations governing his application, may, if he so requests in writing within thirty days of the date of that notice, request an informal hearing on his application and the action of the association in reduction or denial thereof, or the reason for such action, in person before the loan committee or officer or employee thereof authorized to act on applications under section 1.15(11) or 2.12(18). Promptly after such a hearing, he shall be notified of the decision upon reconsideration and the reasons therefor.

Sec. 4.15. Nomination of Association Directors; Representative Selection of Nominees.—Each production credit association and each Federal land bank association shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year. Each nominating committee shall review lists of farmers from the association territory, determine their willingness to serve, and submit for election a slate of eligible candidates which shall include at least two nominees for each elective office to be filled. In doing so, the committee shall endeavor to assure representation to all sections of the association territory and as nearly as possible to all types of agriculture practiced within the area. Employees of the association shall not be eligible to be nominated, elected, or serve as a member of the board. Nominations shall also be accepted from the floor. Members of the board are not eligible to serve on the nominating committee. Regulations of the Farm Credit Administration governing the election of district directors shall similarly assure a choice of two nominees for each elective office to be filled and that the district board represent as nearly as possible all types of agriculture in the district.

Sec. 4.16. Prohibition Against Tax-Exempt Guarantees.—Notwithstanding any other provision of this Act, no guarantee shall be made on any instrument of indebtedness the income from which is exempt in whole or in part from Federal taxation.

Sec. 4.17. Interest Rates.—Interest rates on loans from institutions of the Farm Credit System shall be determined with the approval of the Farm Credit Administration as provided in this Act, notwithstanding any interest rate limitation imposed by any State constitution or statute or other law(s) which are hereby preempted for purposes of this Act. Interest rates on loans made by agricultural credit corporations organized in conjunction with cooperative associations for the purpose of financing the ordinary crop operations of the members of such associations or other producers and eligible to discount with the Federal intermediate credit banks pursuant to section 2.3 of this Act shall be exempt from any interest rate limitation imposed by any State constitution or statute or other law(s) which are hereby preempted for purposes of this Act.

Sec. 4.18. Participation Loans.—Notwithstanding any other provisions of this Act, the terms of any loan participated in by two or more Farm Credit System institutions operating under different titles of this Act, including provision for capitalization of the portion of the loan participated in by each institution, shall be as may be agreed upon among such institutions and authorized by the Farm Credit Administration, except that for purposes of determining borrower eligi-

bility, membership, term, amount, loan security, and purchase of stock or participation certificates by the borrower, the provisions of law applicable to the loan shall be the provisions in the title under which the institution that originates the loan operates.

Sec. 4.19. Young, Beginning, and Small Farmers and Ranchers.—(a) Under policies of the district board, each Federal land bank association and production credit association shall prepare a program for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers. Such programs shall assure that such credit and services are made available in coordination with other units of the Farm Credit System serving the territory and with other governmental and private sources of credit. Each program shall be subject to review and approval by the supervising bank.

(b) The Federal land bank and the Federal intermediate credit bank for each district shall annually obtain from associations under their supervision reports of activities under programs developed pursuant to subsection (a) of this section and progress toward program objectives. On the basis of such reports, the banks shall provide to the Farm Credit Administration a joint annual report summarizing the operations and achievements in their district under such programs.

Part D—Service Organizations

Sec. 4.25. Establishment.—Any bank of the Farm Credit System, or two or more of such banks acting together, may organize a corporation or corporations for the purpose of performing functions and services for or on behalf of the organizing bank or banks that the bank or banks may perform pursuant to this Act: Provided, That a corporation so organized shall have no authority either to extend credit or provide insurance services for borrowers from Farm Credit System institutions, nor shall it have any greater authority with respect to functions and services than the organizing bank or banks possess under this Act. The organizing bank or banks shall apply for a Federal charter for the corporation by forwarding to the Governor of the Farm Credit Administration a statement of the need for the corporation and proposed articles specifying in general terms the objectives for which the corporation is formed, the powers to be exercised by it in carrying out the functions and services, and the territory it is to serve. The Governor for good cause may deny the charter applied for. Upon the approval of articles by the Governor and the issuance of a charter, the corporation shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

Sec. 4.26. Powers of the Governor.—The Governor shall have power, under rules and regulations prescribed by the Governor or by prescribing in the terms of the charter or by approval of the bylaws of the corporation, to provide for the organization of any corporation chartered under this part and the territory within which its operations may be carried on, and to direct at any time such changes in its charter as he finds necessary for the accomplishment of the purposes of this Act. The powers of the Governor to provide for the organization of any corporation chartered under this part include, but are not limited to approval of—

(1) corporate title;

(2) general corporate powers;

(3) eligibility for membership on, and the powers, composition, selection, terms, and compensation of the board of directors;

(4) classes, issuance, value, and retirement of stock;

(5) sources of operating funds;

(6) dissolution, liquidation, and distribution of assets on liquidation; and

(7) application and distribution of earnings.

SEC. 4.27. SUPERVISION AND EXAMINATION.—The corporations organized under this part shall be institutions of the Farm Credit System and shall be subject to the same supervision and examination by the Farm Credit Administration as are the organizing bank or banks under this Act.

SEC. 4.28. STATE LAWS.—State and other laws shall apply to corporations organized pursuant to this part to the same extent such laws would apply to the organizing bank(s) engaged in the same activity in the same jurisdiction: Provided, however, That to the extent that sections 1.21, 2.8, and 3.31 of this Act may exempt banks of the Farm Credit System from taxation, such exemptions, other than with respect to franchise taxes, shall not extend to corporations organized pursuant to this part.

PART E—SALE OF INSURANCE

SEC. 4.29. LINES OF INSURANCE.—(a) The regulations of the Farm Credit Administration governing financially related services that the banks and associations of the Farm Credit Administration may provide under sections 1.11, 1.15, 2.5, and 2.16 of this Act may authorize the sale to any member of any such bank or association, on an optional basis, of credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtors and other insurance necessary to protect the member's farm or aquatic unit, but limited to, hail and multiple-peril crop insurance, title insurance, and insurance to protect the facilities and equipment of aquatic borrowers.

(b) Such regulations shall further provide that—

(1) in any case in which insurance is required as a condition for a loan or other financial assistance from a bank or association, notice be given that it is not necessary to purchase the insurance from the bank or association and that the borrower has the option of obtaining the insurance elsewhere;

(2) such insurance services may be offered only if—

(i) the bank or association has the capacity to render insurance service under this Act in an effective and efficient manner;

(ii) there exists the probability that any insurance program under this Act will generate sufficient revenue to cover all costs; and

(iii) rendering insurance service will not have an adverse effect on the bank's or association's credit or other operations; and

(3) *no bank or association shall directly or indirectly discriminate in any manner against any agent, broker, or insurer that is not affiliated with such bank or association, or against any party who purchases insurance through any such nonaffiliated insurance agent, broker, or insurer.*

(*c*) *Notwithstanding any provision of this section to the contrary, any bank or association which, on the date of enactment of the Farm Credit Act Amendments of 1980, is offering insurance coverages not authorized by this section may continue to sell such coverages for a period of not more than one year from such date of enactment and may continue to service such coverages until their expiration.*

TITLE V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

PART A—DISTRICT ORGANIZATION

SEC. 5.0. CREATION OF DISTRICTS.—There shall be not more than twelve farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico *and one of which districts may, if authorized by the Federal Farm Credit Board, include the Virgin Islands of the United States: Provided, That the extension of credit and other services authorized by this Act in the Virgin Islands of the United States shall be undertaken only if determined to be feasible under regulations of the Farm Credit Administration.* The boundaries of the twelve farm credit districts existing on the date of enactment of this Act may be readjusted from time to time by the Federal Farm Credit Board, with the concurrence of the district boards involved. Two or more districts may be merged as provided in section 5.18(2).

SEC. 5.1. DISTRICT BOARDS OF DIRECTORS; MEMBERSHIP; ELIGIBILITY; TERMS.—(a) There shall be in each farm credit district a farm credit board of directors composed of seven members. Each farm credit district board may include in its title the name of the city in which the banks of the System for the district are located or other geographical designation.

(b) To be eligible for membership on a farm credit district board a person must be a citizen of the United States for at least ten years, and a resident of the district for at least two years.

A person shall not be eligible who—

(1) is or has, within one year next preceding the date of election or appointment, been a salaried officer or employee of the Farm Credit Administration or of any institution of the System;

(2) has been convicted of a felony or adjudged liable in damages for fraud; or

(3) if there is at the time of his election another resident of the same State who was elected to the district board by the same electorate, except where a district embraces only one State.

No director of a district board shall be eligible to continue to serve in that capacity and his office shall become vacant if after his election or appointment as a member of a district board, he continues or becomes a salaried officer or employee of the Farm Credit Administration, of any institution of the System, or a member of the Federal Farm Credit Board, or if he becomes legally incompetent or is finally convicted of a felony or held liable in damages for fraud. In any event, no director shall, within one year after the date when he ceases to be a member of the board, be elected or designated to serve as a salaried employee of any bank or joint employee of the district for which he served as director.

(c) The terms of district directors shall be for three years, except that the terms of appointed directors may be for a shorter or longer term to permit the staggering of such appointments over a three-year period but in no event shall such appointed director be eligible to serve for more than two full terms.

SEC. 5.2. SAME; NOMINATION; ELECTION; APPOINTMENT.—(a) Two of the district directors shall be elected by the Federal land bank associations, two by the production credit associations, and two by the borrowers from or subscribers to the guaranty fund of the bank for cooperatives. The seventh member shall be appointed by the Governor with the advice and consent of the Federal Farm Credit Board.

(b) At least two months before an election of an elected director the Farm Credit Administration shall cause notice in writing to be sent to those entitled to nominate candidates for such elected director. In the case of an election of a director by Federal land bank associations and borrowers through agencies, such notice shall be sent to all Federal land bank associations and borrowers through agencies in the district; in the case of an election by production credit associations, such notice shall be sent to all production credit associations in the district; and in the case of an election by cooperatives which are voting stockholders or subscribers to the guaranty fund of the bank for cooperatives of the district, such notice shall be sent to all cooperatives which are eligible, voting stockholders or subscribers to the guaranty fund at the time of sending the notice. The notice in the case of associations shall state the number of votes the board of each association is entitled to cast for nomination and election based on the voting stockholders of the association as determined by the Farm Credit Administration as near as practicable to the date of the notice. After receipt of such notice those entitled to nominate a director shall forward nominations to the Farm Credit Administration. The Farm Credit Administration shall, from the nominations received within sixty days after it sends such notice, prepare a list of candidates for such elected director, consisting of the [three] *two* nominees receiving the highest number of votes, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days.

(c) At least one month before the election of an elected director, the Farm Credit Administration shall mail to each person or organization entitled to elect the elected director a list of the [three] *two* candidates receiving the highest number of votes from those nominated in accordance with subsection (b). In the case of an election of a director by the Federal land bank associations, the directors of each land bank association shall cast the vote of such association for one of the candidates on the list. Each association shall be entitled to cast the number of votes specified in the notice prior to the nomination poll as determined by the Farm Credit Administration to be the number of voting stockholders of each association, and each direct borrower and borrower through agent shall be entitled to cast one vote. Each production credit association shall be entitled to cast the number of votes specified in the notice of nomination poll as determined by the Farm Credit Administration to be equal to the number of voting stockholders of such association. Each cooperative which is the holder of voting stock in or a subscriber to the guaranty fund of the bank for cooperatives shall be entitled to cast one vote except as provided in subsection 3.3(d). The votes shall be forwarded to the Farm Credit Administration and no vote shall be counted unless received by it within sixty days after the sending of such list of candidates, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days. In the case of a tie another runoff election between those tying shall be held.

(d) Any vacancies in the board of directors shall be filled for the unexpired term in the manner provided in sections 5.1 and 5.2 for the selection of such directors.

Sec. 5.3. District Directors Constitute Boards of Directors for Federal Land Banks, Federal Intermediate Credit Banks, and District Banks for Cooperatives.—The members of each farm credit district board of directors shall be and shall have all the functions, powers, and duties of directors for the Federal land banks, the Federal intermediate credit banks, and the district banks for cooperatives in their respective districts.

Sec. 5.4. District Board Officers.—Each farm credit district board shall elect from its members a chairman and a vice chairman and shall appoint a secretary from within or without its membership as it may see fit. The chairman, vice chairman, and secretary shall hold office for a term of one year and until their successors are selected and take office.

Sec. 5.5. Compensation of District Board.—Members of each farm credit district board shall receive compensation, including reasonable allowances for necessary expenses, in attending meetings of the board as district board and as directors of the district banks including travel time. The compensation shall not be in excess of the level set by the Farm Credit Administration. In addition to attending said meetings, a director may not receive compensation and allowances for any services rendered in his capacity as director or otherwise for more than thirty days or parts of days in any one calendar year without the approval of the Farm Credit Administration.

Sec. 5.6. Powers of the District Farm Credit Board.—(a) Each farm credit district board shall have power to—

(1) Act as the board of directors for the district and of the several banks of the System in the district.

(2) Provide rules and regulations, governing the banks and associations in the district, not inconsistent with law.

(3) Elect or provide for joint officers and employees for the banks in its district which are institutions of the System or, upon agreement with banks in other districts, joint officers and employees of institutions in more than one district. The salary or other compensation of all such joint officers and employees and the allocation thereof between

the banks shall be fixed by the district farm credit board. Officers and employees elected or provided for by the district farm credit board, whether separate officers and employees of the institutions or joint officers and employees, shall be officers and employees of the district institutions served by them. Employment, compensation, leave, retirement, except as provided in subsection (b) of this section, hours of duty, and all other conditions of employment of such joint officers and employees and of the separate officers and employees of the institutions in the district provided for by the board of directors shall be without regard to the provisions of title 5 of the United States Code relating to such matters, but all such determinations shall be consistent with the law under which the banks are organized and operate. Appointments, promotions, and separations so made shall be based on merit and efficiency and no political test or qualification shall be permitted or given consideration. The limitations against political activity and conflict of interest of such officers and employees shall be in accordance with rules and regulations prescribed by the Farm Credit Administration.

(4) Authorize the acquisition and disposal of such property, real or personal, as may be necessary or convenient for the transaction of the business of the banks of the System located in its district, upon such terms and conditions as it shall fix, and to prorate among such banks the cost of purchases, rentals, construction, repairs, alterations, maintenance, and operation in such amounts and in such manner as it shall determine. Any lease, or any contract for the purchase or sale of property, or any deed or conveyance of property, or any contract for the construction, repair, or alteration of buildings, authorized by a district farm credit board under this subsection shall be executed by the officers of the bank or banks concerned pursuant to the direction of such board. No provision of law relative to the acquisition or disposal of property, real or personal, by or for the United States, or relative to the making of contracts or leases by or for the United States, including the provisions set out in titles 40 and 41, and including provisions applicable to corporations wholly owned by the United States, shall be deemed or held applicable to any lease, purchase, sale, deed, conveyance, or contract authorized or made by a district farm credit board or the banks of the System under this subsection.

(5) Authorize agreements for the provision of joint services between institutions in the System and between districts for those banks' and associations' functions and for those services to borrowers which can most effectively be performed by the joint undertakings of the district or districts, all of such activities to be subject to the same supervision of the Farm Credit Administration as is applicable to such institutions under this Act.

(6) Formulate broad policy considerations concerning the funding operations of the banks in the district and, in concert with the other district boards, furnish unified long-range policy guidance for the funding of the System.

(b) The provisions of subsection (a) of this section are qualified as follows:

(1) Each officer and employee of the banks of the System who, on December 31, 1959, was within the purview of the Civil Service Retire-

ment Act, as amended, shall continue so during his continuance as an officer or employee of any such banks or of the Farm Credit Administration without break in continuity of service. Any other officer or employee of such banks and any other person entering upon employment with any such banks after December 31, 1959, shall not be covered under the civil service retirement system by reason of such employment, except that (1) a person who, on December 31, 1959, was within the purview of the Civil Service Retirement Act, as amended, and thereafter becomes an officer or employee of any such banks without break in continuity of service shall continue under the civil service retirement system during his continuance as an officer or employee of any such banks without break in continuity of service and (2) a person who has been within the purview of said Act as an officer or employee of such banks and, after a break in such employment, again becomes an officer or employee of any of such banks may elect to continue under the civil service retirement system during his continuance as such officer or employee by so notifying the Civil Service Commission in writing within thirty days after such reemployment.

(2) Each of the banks of the System shall contribute to the civil service retirement and disability fund, for each fiscal year after June 30, 1960, a sum as provided by section 4(a) of the Civil Service Retirement Act, as amended, except that such sum shall be determined by applying to the total basic salaries (as defined in that Act) paid to the employees of said banks who are covered by that Act, the per centum rate determined annually by the United States Civil Service Commission to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in such section 4(a). Each bank shall also pay into the Treasury as miscellaneous receipts such portion of the cost of administration of the fund as is determined by the United States Civil Service Commission to be attributable to its employees.

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

SEC. 5.7. THE FARM CREDIT ADMINISTRATION.—The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Federal Farm Credit Board, the Governor of the Farm Credit Administration, and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this Act.

SEC. 5.8. THE FEDERAL FARM CREDIT BOARD; NOMINATION AND APPOINTMENT OF MEMBERS; ORGANIZATION AND COMPENSATION.—(a) There is established in the Farm Credit Administration a Federal Farm Credit Board. The Board shall consist of not more than thirteen members, one of whom shall be designated by the Secretary of Agriculture. The remainder of the Board shall be appointed by the President, with the advice and consent of the Senate, one from each farm credit district, to be known as the appointed members.

(b) In making appointments tothe Board, the President shall have due regard to a fair representation of the public interest, the welfare of all farmers, and the types of institutions constituting the Farm

Credit System, with special consideration to persons who are experienced in cooperative agricultural credit, taking into consideration the lists of nominees proposed by the Farm Credit System as hereinafter provided.

(c) Each appointed member of the Board shall have been a citizen of the United States and shall have been a resident of the district from which he was appointed for not less than ten years next preceding his appointment, and the removal of residence from the district shall operate to terminate his membership on the Board. No person shall be eligible for nomination or appointment if within one year next preceding the commencement of his term he has been a salaried officer or employee of the Farm Credit Administration or a salaried officer or employee of any institution of the Farm Credit System. Any person who is a member of a district farm credit board when appointed as a member of the Federal Farm Credit Board shall resign as a member of the district board before assuming his duties as a member of the Board. No person who becomes an appointed member of the Board shall be eligible to continue to serve in such capacity if such person is or becomes a member of a district farm credit board, or an officer or employee of the Farm Credit Administration, or director, officer, or employee of any institution of the Farm Credit System. No director shall, within one year after the date when he ceases to be a member of the Board, be elected or designated to serve as a salaried officer or employee of any bank, joint officer or employee, or officer or employee of the Farm Credit Administration.

(d) The Secretary of Agriculture shall designate one member of the Board to serve at the pleasure of the Secretary. He shall be known as the Secretary's representative on the Board. He shall be a citizen of the United States and shall have been a resident of the United States for not less than ten years preceding his designation on the Board. No person shall be designated by the Secretary if such person is a member of a farm credit district board, an officer or employee of the Farm Credit Administration, or an officer or employee of any institution operating under the supervision of the Farm Credit Administration. The Secretary's representative shall not be eligible to serve as Chairman, Vice Chairman, or Secretary of the Board but shall otherwise possess all the rights and privileges of membership on the Board.

(e) The term of office of the appointed members of the Board shall be six years and such members shall serve until their successors are duly appointed and qualified. No appointed member of the Board shall be eligible to serve more than one full term of six years and, in addition, if he is appointed to fill the unexpired portion of one term expiring before his appointment to a full term, he may be eligible thereafter for appointment to fill a full term of six years.

All vacancies for the offices of appointed members shall be filled for the unexpired portion of the term upon like nominations and like appointments: *Provided, however,* That the district board of directors may select a representative to meet with the Board, without the right of vote, prior to the filling of a vacancy occasioned by death, resignation, disability, or declination in the office of member from that district, under rules and regulations prescribed by the Board.

(f) A list of nominees for appointment as an appointed member of the Board shall be presented to the President for consideration in the filling of any office of Board member. The list shall be composed of one selected by each voting group in the district in which the member's term is about to expire or in which a vacancy occurs, determined in accordance with the procedure prescribed in section 5.2 of this title for the nomination and election of members of a district farm credit board, except that the list of candidates for the Board for final election in the district shall be the two nominees of each voting group receiving the highest number of votes.

(g) The members of the Board shall meet and subscribe the oath of office and annually organize by the election of a Chairman and Vice Chairman. The Board shall appoint a Secretary from within or without the membership. Such officers of the Board shall serve for one year and until their successors are selected and take office. The Board may function notwithstanding vacancies exist, provided a quorum is present. A quorum shall consist of a majority of all the members of the Board, for the transaction of business. The Board shall hold at least four regularly scheduled meetings a year and such additional meetings at such times and places as it may fix and determine. Such meetings may be held on the call of the Chairman or any three Board members.

(h) Each of the Board members shall receive [the sum of $100 a day] *compensation at a rate equal to the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 of the United States Code* for each day or part thereof in the performance of his official duties at regular and special meetings of the Board and regular and special meetings of district boards. In addition to attending said meetings, members may receive compensation for services rendered as member for not more than thirty days or parts of days in any calendar year, and shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of their official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. The Secretary's representative if he is a full-time officer or employee of the United States shall receive no additional compensation for his official duties on the Board, but may receive travel and subsistence and other expenses.

(i) The Board shall adopt such rules as it may see fit for the transaction of its business, and shall keep permanent records and minutes of its acts and proceedings.

SEC. 5.9. POWERS OF THE BOARD.—The Federal Farm Credit Board shall establish the general policy for the guidance of the Farm Credit Administration and approve the necessary rules and regulations for the implementation of this Act not inconsistent with its provisions; may require such reports as it deems necessary from the institutions of the Farm Credit System; provide for the examination of the condition of and general supervision over the performance of the powers, functions, and duties vested in each such institution, and for the performance of all the powers and duties vested in the Farm Credit Administration or in the Governor which, in the judgment of the Board, relate to matters of broad and general supervisory, advisory, or policy nature. The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by the Board. It shall not operate in an administrative capacity.

SEC. 5.10. GOVERNOR; APPOINTMENT; RESPONSIBILITIES.—The Governor of the Farm Credit Administration shall be appointed by and serve at the pleasure of the Federal Farm Credit Board. He shall be responsible, subject to the general supervision and direction of the Board as to matters of a broad and general supervisory, advisory, or policy nature, for the execution of all of the administrative functions and duties of the Farm Credit Administration. During any period in which the Governor holds any stock in any of the institutions subject to supervision of the Farm Credit Administration, the appointment of the Governor shall be subject to approval by the President and during any such period the President shall have the power to remove the Governor.

SEC. 5.11. COMPENSATION; SALARY AND EXPENSE ALLOWANCE.—The compensation of the Governor of the Farm Credit Administration shall be at the rate fixed in the Executive Pay Schedule. The Board shall fix the allowance for his necessary travel and subsistence expenses or per diem in lieu thereof.

SEC. 5.12. COMPLIANCE WITH BOARD ORDERS.—It shall be the duty of the Governor of the Farm Credit Administration to comply with all orders and directions which he receives from the Federal Farm Credit Board and, as to third persons, all acts of the Governor shall be conclusively presumed to be in compliance with the orders and directions of the Board.

SEC. 5.13. FARM CREDIT ORGANIZATION.—The Governor of the Farm Credit Administration is authorized, in carrying out the powers and duties now or hereafter vested in him by this Act and acts supplementary thereto, to establish and to fix the powers and the duties of such divisions and instrumentalities as he may deem necessary to the efficient functioning of the Farm Credit Administration and the successful execution of the powers and duties so vested in the Governor and the Farm Credit Administration. The Governor shall appoint such other personnel as may be necessary to carry out the functions of the Farm Credit Administration: *Provided*, That the salary of positions of Deputy Governors shall not exceed the maximum scheduled rate of the general schedule of the Classification Act of 1949, as amended. The powers of the Governor may be exercised and performed by him through such other officers and employees of the Farm Credit Administration as he shall designate.

SEC. 5.14. SEAL.—The Farm Credit Administration shall have a seal, as adopted by the Governor, which shall be judicially noted.

SEC. 5.15. ADMINISTRATIVE EXPENSES.—The Farm Credit Administration may, within the limits of funds available therefor, make necessary expenditures for personnel services and rent at the seat of Government and elsewhere; contract stenographic reporting services; purchase and exchange lawbooks, books of reference, periodicals, newspapers, expenses of attendance at meetings and conferences; purchase, operation, and maintenance at the seat of Government and elsewhere of motor-propelled passenger-carrying vehicles and other vehicles; printing and binding; and for such other facilities and services, including temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of this Act. *The Farm Credit Administration may dispose of property so acquired and any amounts collected from the disposition of such property shall be deposited in the special fund provided for in section 5.16(b) of this Act and shall be available to the Administration in the same manner and for the same purposes as the funds collected under section 5.16 (a) of this Act.*

Sec. 5.16. Allocation of Expenses for Administrative Services by the Farm Credit Administration; Disposition of Money.—(a) The Farm Credit Administration shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuing fiscal year in administering this Act, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as the Farm Credit Administration shall determine, and shall assess against and collect in advance the amounts so apportioned from the institutions among which the apportionment is made.

(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund and, without regard to other law, shall be available to said Administration for expenditure during each fiscal year for salaries and expenses of said Administration. As soon as practicable after the end of each such fiscal year, the Administration shall determine, on a fair and reasonable basis, the cost of operation of the Farm Credit Administration and the part thereof which fairly and equitably should be allocated to each bank and association as its share of the cost during the fiscal year of such Administration. If the amount so allocated is greater than the amount collected from the bank or other institutions, the difference shall be collected from such bank or other institutions, and, if less, shall be refunded from the special fund to the bank or other institutions entitled thereto or credited in the special fund to such bank or other institutions for use for the same purposes in future fiscal years.

Sec. 5.17. Quarters and Facilities for the Farm Credit Administration.—As an alternate to the rental of quarters under section 5.15, and without regard to any other provision of law, the banks of the System, with the concurrence of two-thirds of the district boards, are hereby authorized—

(1) To lease or acquire real property in the District of Columbia or elsewhere for quarters of the Farm Credit Administration.

(2) To construct, develop, furnish, and equip such building thereon and such facilities appurtenant thereto as in their judgment may be appropriate to provide, to the extent the Federal Farm Credit Board may deem advisable, suitable, and adequate quarters and facilities for the Farm Credit Administration.

(3) To enlarge, remodel, or reconstruct the same.

(4) To make or enter into contracts for any of the foregoing.

(5) To sell or otherwise dispose of any interest in property leased or acquired under the foregoing if authorized by the Board.

In actions undertaken by the banks pursuant to the foregoing provisions of this section, the Farm Credit Administration may act as agent for the banks.

The Board may require of the respective banks of the System, and they shall make to the Farm Credit Administration, such advances of funds for the purposes set out in this section as in sole judgment of the Board may from time to time be advisable for the purposes of this section. Such advances shall be in addition to and kept in a separate fund from the assessments authorized in section 5.16 and shall be apportioned by the Board among the banks in proportion to the total assets of the respective banks, and determined in such manner and at such times as the Board may prescribe. The powers of the banks of the System and purposes for which obligations may be issued by such banks are hereby enlarged to include the purpose of obtaining funds to permit the making of advances required by this section. The plans and decisions for such building and facilities and for the enlargement, remodeling, or reconstruction thereof shall be such as is approved in the sole discretion of the Board.

SEC. 5.18. ENUMERATED POWERS.—(*a*) The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this Act:

(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, as approved by the Federal Farm Credit Board, with the concurrence of the district boards involved.

(2) Where necessary or appropriate to carry out the policy and objectives of this Act, issue and amend or modify Federal charters or the bylaws of institutions of the System; approve change in names of banks operating under this Act; approve the merger of districts when agreed to by the boards of the districts involved and by a majority vote of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts, voting in the same manner as is provided in section 4.10 of this Act; approve mergers of banks operating under the same title of this Act, merger of Federal land bank associations, merger of production credit associations and the consolidation or division of the territories which they serve; and approve consolidations of boards of directors or management agreements. Such mergers shall be encouraged where such action will improve service to borrowers and the financial stability, effect economies of operation, or permit desirable joint management, or consolidation of territories and office quarters.

(3) Make annual reports directly to the Congress on the condition of the System and its institutions and on the manner and extent to which the purposes and objectives of this Act are being carried out and, from time to time, recommend directly legislative changes. *The annual reports shall include a summary and analysis of the reports submitted to the Farm Credit Administration by the Federal land banks and Federal intermediate credit banks under section 4.19(b) of this Act relating to programs for serving young, beginning, and small farmers and ranchers.*

(4) Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer of such institutions.

(5) Coordinate the activities of the banks in making studies of lending standards, including appraisal and credit standards; approve national and district standards, procedures, and appraisal forms; prescribe price and cost levels to be used in such standards, appraisals, and lending; supplement the work of the district under the foregoing where necessary to accomplish the purposes of this Act.

(6) Prescribe loan security requirements and the types, classes, or number of loans which may be made only with prior approval.

(7) Conduct loan and collateral security review.

(8) Approve the issuance of obligations of the institutions of the System and execute on behalf of the banks consolidated and Systemwide obligations for the purpose of funding the authorized operations of the institutions of the System, and prescribe collateral therefor.

(9) Approve interest rates paid by institutions of the System on their bonds, debentures, and similar obligations, the terms and conditions thereof, and interest or other charges made by such institutions to borrowers.

(10) Make investments in stock of the institutions of the System as provided in section 4.0 out of the revolving fund, and require the retirement of such stock.

(11) Regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System.

(12) Coordinate and assist in providing services necessary for the convenient, efficient, and effective management of the institutions of the System.

(13) Undertake research into the rural credit needs of the country and ways and means of meeting them and of the funding of the operations of the System in relation to changing farming and economic conditions.

(14) Prepare and disseminate information to the general public on use, organization, and functions of the System and to investors on merits of its securities.

(15) Require surety bonds or other provision for protection of the assets of the institutions of the System against losses occasioned by employees.

(16) Prescribe rules and regulations necessary or appropriate for carrying out the provisions of this Act.

(17) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this Act.

(b)(1) At least thirty days prior to publishing any proposed regulation in the Federal Register, the Farm Credit Administration shall transmit a copy of the regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Farm Credit Administration shall also transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in paragraph (2) of this subsection, no final regulation of the Farm Credit Administration shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(2) In the case of an emergency, a final regulation of the Farm Credit Administration may become effective without regard to the last sentence of paragraph (1) of this subsection if the Farm Credit Administration notifies in writing the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c)(1) If there are any unresolved differences between the Farm Credit Administration and the Board of Governors of the Federal Reserve System as to whether any regulation implementing section 3.7(b) of this Act or the other provisions of title III relating to the authority under section 3.7(b) conforms to national banking policies, objectives, and limitations, simultaneously with promulgation of any such regulation under this Act, and simultaneously with promulgation of any regulation implementing section 2.3 of this Act, the Farm Credit Administration shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in paragraph (2), the regulation shall not become effective if, within ninety calendar days of continuous session of Congrgess after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Farm Credit Administration dealing with the matter of , which regulation was transmitted to Congress on ", the blank spaces therein being appropriately filled.

(2) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided in paragraph (1).

(3) for the purposes of paragraphs (1) and (2) of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(4) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulations.

SEC. 5.19. DELEGATION OF DUTIES AND POWERS TO INSTITUTIONS OF THE SYSTEM.—The Farm Credit Administration is authorized and directed, by order or rules and regulations, to delegate to a Federal land bank such of the duties, powers, and authority of the Farm Credit Administration with respect to and over a Federal land bank or Federal land bank associations, their officers and employees, in the farm credit district wherein such Federal land bank is located, as may be determined to be in the interest of effective administration; and, in like manner, to delegate to a Federal intermediate credit bank such of the duties, powers, and authority of the Farm Credit Administration with respect to and over a Federal intermediate credit bank or production credit associations, their officers and employees, in the farm credit district wherein such Federal intermediate credit bank is located, as may be determined to be in the interest of effective administration; to authorize the redelegation thereof; and, in either case the duties, powers, and authority so delegated or redelegated shall be performed and exercised under such conditions and requirements and upon such terms as the Farm Credit Administration may specify. Any Federal land bank or Federal intermediate credit bank to which any such duties, powers, or authority may be delegated or any association to which any power may be redelegated, is authorized and empowered to accept, perform, and exercise such duties, powers, and authority as may be so delegated to it.

SEC. 5.20. EXAMINATION AND REPORTS.—Except as provided herein, each institution of the System, and each of their agents, at such times as the Governor of the Farm Credit Administration may determine, shall be examined and audited by farm credit examiners under the direction of an independent chief Farm Credit Administration examiner, but each bank and each production credit association shall be examined and audited not less frequently than once each year. Such examinations shall include objective appraisals of the effectiveness of management and application of policies in carrying out the provisions of this Act and in servicing all eligible borrowers. If the Governor determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, and in accordance with generally accepted auditing standards. Upon request of the Governor or any bank of the System, farm credit examiners shall also make examinations and written reports of the condition of any organization, other than national banks, to which, or with which, any institution of the System contemplates making a loan or discounting paper of such organization. For the purpose of this Act, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act, the Federal Reserve Act, the Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

SEC. 5.21. CONDITIONS OF OTHER BANKS AND LENDING INSTITUTIONS.—The Comptroller of the Currency is authorized and directed, upon request of the Farm Credit Administration to furnish for confidential use of an institution of the System such reports, records, and other information as he may have available relating to the financial condition of national banks through, for, or with which such institution of the System has made or contemplates making discounts or loans and to make such further examination, as may be agreed, of organizations through, for, or with which such institution of the Farm Credit System has made or contemplates making discounts or loans.

SEC. 5.22. CONSENT TO THE AVAILABILITY OF REPORTS AND TO EXAMINATIONS.—Any organization other than State banks, trust companies, and savings associations shall, as a condition precedent to securing discount privileges with a bank of the Farm Credit System, file with such bank its written consent to examination by farm credit examiners as may be directed by the Farm Credit Administration; and State banks, trust companies, and savings associations may be required in like manner to file a written consent that reports of their examination by constituted State authorities may be furnished by such authorities upon the request of the Farm Credit Administration.

SEC. 5.23. REPORTS ON CONDITIONS OF INSTITUTIONS RECEIVING LOANS OR DEPOSITS.—The executive departments, boards, commissions, and independent establishments of the Government of the United States, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon request of the Farm Credit Administration, to make available to it or to any institution of the System in confidence all reports, records, or other information relating to the condition of any organization to which such institution of the System has made or contemplates making loan or for which it has or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or a depository. The Federal Reserve banks in their capacity as depositories, agents, and custodians for bonds, debentures, and other obligations issued by the banks of the System or book entries thereof are also authorized and directed, upon request of the Farm Credit Administration, to make available for audit by farm credit examiners all appropriate books, accounts, financial records, files, and other papers.

SEC. 5.24. JURISDICTION.—Each institution of the System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located.

SEC. 5.25. STATE LEGISLATION.—Whenever it is determined by the Farm Credit Administration, or by judicial decision, that a State law is applicable to the obligations and securities autherized to be held by the institutions of the System under this Act, which law would provide insufficient protection or inadequate safeguards against loss in the event of default, the Farm Credit Administration may declare such obligations or securities to be ineligible as collateral for the issuance of new notes, bonds, debentures, and other obligations under this Act.

SEC. 5.26. REPEAL.—(a) The Federal Farm Loan Act, as amended; section 2 of the Act of March 10, 1924 (Public Numbered 35, Sixty-eighth Congress, 43 Stat. 17), as amended; section 6 of the Act of January 23, 1932 (Public Numbered 3, Seventy-second Congress, 47 Stat. 14), as amended; the Farm Credit Act of 1933, as amended; sections 29 and 40 of the Emergency Farm Mortgage Act of 1933; Act of June 18, 1934 (Public Numbered 381, Seventy-third Congress, 48 Stat. 983); Act of June 4, 1936 (Public Numbered 644, Seventy-fourth Congress, 49 Stat. 1461), as amended; sections 5, 6, 20, 25(b) and 30 of the Farm Credit Act of 1937, as amended; sections 601 and 602 of the Act of September 21, 1944 (Public Law 425, Seventy-eight Congress, 58 Stat. 740, 741), as amended; sections 1, 2, 3, 4, 5, 6, 7, 8, 16, and 17(b) of the Farm Credit Act of 1953, as amended; sections 2, 101, and 201(b) of the Farm Credit Act of 1956 are hereby repealed. All references in other legislation, State or Federal, rules and regulations of any agency, stock, contracts, deeds, security instruments, bonds, debentures, notes, mortgages and other documents of the institutions of the System, to the Acts repealed hereby shall be deemed to refer to comparable provisions of this Act.

(b) All regulations of the Farm Credit Administration or the institutions of the System and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Acts repealed by subsection (a) of this section shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act. All stock, notes, bonds, debentures, and other obligations issued under the repealed acts shall be valid and enforceable upon the terms and conditions under which they were issued, including the pledge of collateral against which they were issued, and all loans made and security or collateral therefor held by, and all contracts entered into by, institutions of the System shall remain enforceable according to their terms unless and until modified in accordance with the provisions of this Act; it being the purpose of this subsection to avoid disruption in the effective operation of the System by reason of said repeals.

Sec. 5.27. Amendments to Other Laws.—(a) The Executive Schedule of basic pay (80 Stat. 458, 5 U.S.C. 5311-5317), as amended, is further amended by striking from positions at level IV the "Governor of the Farm Credit Administration." (5 U.S. 5315 (51)) and inserting in positions at level III the additional position "(58) Governor of the Farm Credit Administration." (5 U.S.C. 5314).

(b) The third paragraph of section 15 of the Federal Reserve Act (12 U.S.C. 393) is amended to read as follows:

"The Federal Reserve banks are authorized to act as depositaries for and fiscal agents of any Federal land bank, Federal intermediate credit bank, bank for cooperatives, or other institutions of the Farm Credit System."

Sec. 5.28. Separability.—If any provision of this Act, or the application thereof to any persons or in any circumstances, is held invalid, the remainder of this Act and the application of such provision to other persons or in other circumstances shall not be affected thereby.

Sec. 5.29. Reserve Right to Amend or Repeal.—The right to alter, amend, or repeal any provision or all of this Act is expressly reserved.

Sec. 5.30. General Accounting Office Audit: Report to Congress.—

(a) The Comptroller General shall conduct an evaluation of the programs and activities authorized under the 1980 amendments to this Act, and shall make an interim report to the Congress no later than December 31, 1982, and a final report to the Congress no later than December 31, 1984. The Comptroller General shall include in such

evaluation the effect that this Act, as amended, will have on agricultural credit and agricultural credit services provided by the Farm Credit System, Federal agencies, and other entities. The Comptroller General may make such interim reports to the Congress on the programs and activities under these amendments as the Comptroller General deems necessary or as requested by Members of Congress.

(b) For the purpose of conducting program evaluations required in subsection (a) of this section, the Comptroller General or his duly authorized representatives shall have access to and the right to examine all books, documents, papers, records, or other recorded information within the possession or control of the Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations and banks for cooperatives.

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TITLE 12—UNITED STATES CODE

BANKS AND BANKING

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SEC. 1141b. GENERAL POWERS OF FARM CREDIT ADMINISTRATION

The Farm Credit Administration—

[(1) shall maintain its principal office in the District of Columbia and such other offices in the United States as in its judgment are necessary.**]**

(1) shall maintain its principal office within the Washington, D.C.-Maryland-Virginia standard metropolitan statistical area, and such other offices in the United States as in its judgment are necessary.

* * * * * * *

SUPPLEMENTAL VIEWS OF HON. CHARLES ROSE

I believe section 304(2) of the bill is intended to facilitate the international trade of eligible cooperative associations, and not the international transactions of shippers, processors, and other nonagricultural and noncooperative middlemen. While supporting H.R. 7548, I wish to discourage any broad interpretation of section 304(2) which would permit BC funding to be channeled away from such associations and into the hands of nonagricultural and noncooperative middlemen for their import and export operations.

CHARLIE ROSE.

ADDITIONAL VIEWS OF HON. DAN GLICKMAN

During Committee consideration of H.R. 7548, I offered an amendment that would have sunset two new programs provided for in the bill, the revised authority for other financial institutions (OFI's) to permit access to the Federal Intermediate Credit Bank's (FICB) discount window and new authority for Banks for Cooperatives (BC's) to offer export financing services. The sunset would have taken place on September 30, 1985 unless Congress had taken action to extend the programs.

The OFI and BC sections are new territory in Farm Credit programs. Both could have a profound and significant effect on financial institutions. Indeed, both representatives of the banking industry and some members of the Committee expressed the concern about whether the OFI provision adequately insured FICB access to those banks who were most in need of it. Likewise, questions arose during the final day of debate on the bill about whether large gain companies through their relationships with cooperatives could avail themselves to the BC export financing. While the assumption of the Committee was that such use of BC financing could not occur, it is this matter and concerns about the OFI provision that should be examined at a specific point in the future to determine whether or not the programs are accomplishing the objectives that Congress intended.

In response to concerns that existing contracts or agreements entered into prior to the expiration date would not be protected, the amendment would have provided that those contracts or agreements would have remained in full force and effect regardless of what action Congress took in response to the sunset.

While there are safeguards in the bill to permit some oversight through a legislative veto and a GAO study, I feel strongly that a sunset would further strengthen the bill by requiring a time-specific requirement for program review.

DAN GLICKMAN.

ADDITIONAL VIEWS OF HON. JAMES M. JEFFORDS, HON. KEITH G. SEBELIUS, AND HON. WILLIAM M. THOMAS

THIS BILL AS REPORTED BY THE COMMITTEE WILL RESTRICT (NOT EXPAND) EXISTING FCA AUTHORITY TO OFFER LOAN AND DISCOUNT PRIVILEGES TO OTHER FINANCIAL INSTITUTIONS

We are convinced that the Farm Credit Administration (FCA) needs to continue to provide comprehensive financial assistance to Production Credit Associations and also to increase cooperation with, including loan and discount privileges for, other financial institutions. However, we are of the opinion that the language in H.R. 7548, section 203, is not designed to adequately meet the needs of agricultural and aquatic borrowers who are serviced by other financial institutions.

The language of section 203 may be said to restrict existing Farm Credit Administration authority to offer broad discount privileges to Other Financial Institutions (OFI's) who serve the farm sector in return for providing some specific relief for one segment of the banking community while withholding it from certain other financial institutions who also serve the farm sector who are not now excluded under existing law.

Currently, access to the discount privilege by other financial institutions has been limited by agency regulations and not by statute. The existing statute, under which the Farm Credit Administration is operating, contains authority for the FICB's to discount paper for banks and other private lending institutions. (Apparently, this could be roughly 80 percent of the 14,500 banks who serve the agriculture community.) This authority has existed for many years. This limitation is best illustrated by the fact that in 1979, the FICB's were providing the discount privilege to only 3.3 percent of the OFI's.

The Federal Reserve System discount privilege is not a substitute for the FICB discount privilege. Some of these OFI's either do not have access to the Federal Reserve discount privilege or else their discount privilege is limited in that it is for a substantially shorter period than the operating loans (nine months to one year) needed to provide loan assistance for agricultural purposes.

Although we do not believe that access to the discount privilege should be provided without any restraints to all financial institutions, we do believe that the Farm Credit System has the regulatory authority, under existing statute or as modified moderately as suggested below, to ensure that this privilege will be reasonably and uniformly extended to those financial institutions that are making agricultural loans and which do not have reasonable access to other sources of funds sufficient to provide adequate credit to serve agricultural and aquatic borrowers' needs.

A MODIFIED SECTION 203 SHOULD BE ADOPTED WHICH TOGETHER WITH REASONABLE REGULATIONS AND CONGRESSIONAL OVERSIGHT IS PREFERRED OVER THE COMMITTEE'S PROPOSAL

We do not believe that the restrictive language in section 203 of H.R. 7548 that limits access to the loan and discount privilege of the Federal Intermediate Credit Banks (FICB's) to certain banks based on newly legislated eligibility standards should be part of the bill. We endorse those provisions of section 203 which permit the FICB's to make loans to, and discount loans for, OFI's on all types of loans for all of the purposes that Production Credit Associations (PCA's) are now authorized to make, that is, such loans as those to farm-related businesses and aquatic producers, and certain loans for processing and marketing activities and for "other needs" of agricultural and aquatic producers.

However, the Farm Credit Administration, using existing authority and those added by this bill which do not restrict the loan and discount privilege to certain OFI's, would certainly require regulations to implement this new authority and refine the old authority. Such regulations would receive Congressional scrutiny under the provisions of section 5.18 as amended by this bill (section 507 providing for a two-House legislative veto).

Moreover, as part of that legislative veto review, the Congress could seek the input of the Board of Governors of the Federal Reserve System to determine whether such FCA regulations conform to national banking policies. Such legislative oversight exercised by means of the legislative veto would no doubt also be supplemented by general Committee hearings and oversight from time to time.

In addition, section 508 of the bill provides for the Comptroller General to "conduct an evaluation of the programs and activities" authorized by this bill and the Farm Credit Act as amended by this legislation. Thus, eliminating the restrictive language of the bill as it relates to the discount privilege would (1) conform with broad authority given the Farm Credit Administration in existing law to regulate this matter, (2) add to existing law by providing more Congressional oversight over FCA regulatory authority exercised in the area of the loan and discount privilege, (3) leave intact portions of section 203 which expand on the types of loans that the FICB's may make to and discount for OFI's, and (4) provide analysis of the effects of this legislation and the Farm Credit Act, as amended, not only as respects services provided OFI's, but also its effects on national banking policies and problems across the board.

We would like to stress that we did receive assurances from the Governor of the Farm Credit Administration that every effort would be made to assure that agricultural lenders have access to the FCA system. However, we believe it is important that Members should be aware that this bill in effect repeals broader authority to regulate the financial services that FICB's may extend to OFI's. The bill may, as FCA claims, expand upon the discount privilege so that it would be available to 2500 commercial banks, and it may expand on the total amount of OFI agricultural loans discounted by FICB's. However, it also legislatively repeals a broader authority to provide this financial service as it now exists in the Farm Credit Act, as amended.

THE SENATE BILL (S. 1465) DOES NOT AMEND SECTION 2.3 OF THE FARM CREDIT ACT AS DOES THIS BILL (SECTION 203)

The Senate Committee on Agriculture, Nutrition, and Forestry also considered as part of the Farm Credit Act Amendments bill language similar to that which was accepted by the House Committee on Agriculture. After considerable discussion, the Senate opted only to remove the disparities from the law between Production Credit Associations and Other Financial Institutions in terms of the types of loans which may be discounted. In terms of the ability to restrict the discount privilege extended to certain OFI's, the Senate apparently considered the existing statute to be adequate and in no need of amendment.

We consider that the Senate has exercised prudence in their approach to this matter. The Farm Credit Administration, using existing authority and the modified version of section 203 as suggested earlier, should first develop regulations to provide reasonable access to the discount privilege by other financial institutions. The Congress (with the assistance of the General Accounting Office) can then exercise its oversight authority, as referred to earlier, to ensure that the regulations provide for reasonable access to the FICB discount privilege by those institutions which do not have reasonable access to other sources of funds.

The "bottom line" as it relates to this issue is the need for Congress to ensure the availability of credit (particularly meeting high seasonal demand for operating loans) for agricultural and aquatic borrowers. Existing law, in our opinion, is designed to give FCA the broad flexibility to do this. On the other hand, section 203 of this bill, which is more restrictive than existing law, limits this discretionary authority which we believe has not been supported by the testimony in the hearings or other evidence placed in the record of the proceedings in the Committee consideration of this bill. Unless or until the House is assured that agricultural and aquatic borrowers are better served by this more restrictive language, we urge our colleagues to consider the more prudent course taken by the other body.

James M. Jeffords.
Keith G. Sebelius.
William M. Thomas.

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Union Calendar No. 794

96th Congress, 2d Session - - - - - - - House Report No. 96-1288

REPORT

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

PURSUANT TO

SECTION 302(b) OF THE CONGRESSIONAL BUDGET ACT OF 1974

SEPTEMBER 5, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
59-006 O WASHINGTON : 1980

LETTER OF SUBMITTAL

U.S. House of Representatives,
Committee on Banking, Finance and Urban Affairs,
Washington, D.C., September 5, 1980.

Hon. Thomas P. O'Neill, Jr.,
Speaker, U.S. House of Representatives,
Capitol, Washington, D.C.

Dear Mr. Speaker: Pursuant to section 306(b)(2) of the Congressional Budget Act of 1974, I hereby submit the Report of the Committee on Banking, Finance and Urban Affairs regarding the allocation of budget totals by subcommittees for Fiscal Years 1980 and 1981.

Sincerely,

Henry S. Reuss, *Chairman.*

Enclosure.

Union Calendar No. 794

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96–1288

ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS FOR FISCAL YEARS 1980 AND 1981 IN ACCORDANCE WITH SECTION 302(b)(2) OF THE CONGRESSIONAL BUDGET ACT OF 1974

SEPTEMBER 5, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. REUSS, from the Committee on Banking, Finance and Urban Affairs, submitted the following

REPORT

After consultation with the Senate Committee on Banking, Housing and Urban Affairs, the Committee on Banking, Finance and Urban Affairs submits the following report, in accordance with section 302(b)(2) of the Congressional Budget Act of 1974.

AMOUNTS ALLOCATED TO THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

The statement of managers accompanying the conference report on the first and third concurrent resolutions on the budget for fiscal years 1980 and 1981 allocates the following amounts to the House Committee on Banking, Finance and Urban Affairs: $6,569 and $7,683 million in budget authority, and $1,357 and $3,672 million in outlays.

ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS BY SUBCOMMITTEES

Pursuant to section 302(b)(2) of the Congressional Budget Act this committee has subdivided its allocated budget authority and outlays by subcommittee, relying on the data provided by the Committee on the Budget. Inasmuch as all of the funds attributed to the Banking Committee represent uncontrollable amounts, there is no need to further subdivide these figures in accordance with section 302(b)(B) of that act.

The amounts allocated to the subcommittees are as follows:

ALLOCATION OF BUDGET AUTHORITY AND OUTLAYS BY SUBCOMMITTEES

[In thousands of dollars]

	Budget authority	Outlays
1980		
Subcommittee on International Trade:		
150 International affairs (total)	1, 341, 900	−490, 600
Subcommittee on Housing and Community Development:		
370 Commerce and housing credit	3, 856, 663	3, 146, 971
450 Community and regional development	37, 878	46, 438
500 Education, training and employment	134	−4, 316
550 Health	0	−416
600 Income security	117, 635	6, 084
700 Veterans benefits and services	0	22, 168
Total	4, 012, 310	3, 216, 929
Subcommittee on Financial Institutions Supervision, Regulation and Insurance:		
370 Commerce and housing credit (total)	1, 200, 000	−1, 384, 234
Subcommittee on Consumer Affairs:		
800 General government (total)	2, 800	2, 800
Subcommittee on Domestic Monetary Policy:		
900 Interest (total)	12, 124	12,888
Committee total	6, 569, 134	1, 357, 783
1981		
Subcommittee on International Trade:		
150 International Affairs (total)	6, 449, 999	−470, 900
Subcommittee on Housing and Community Development:		
370 Commerce and housing credit	886, 115	−1, 073, 307
450 Community and regional development	39, 463	44, 266
500 Education, training and employment	179	1, 492
550 Health	0	−13
600 Income security	294, 621	0
700 Veterans benefits and services	0	1, 072
Total	1, 220, 378	−1, 025, 590
Subcommittee on Financial Institutions Supervision, Regulation and Insurance:		
370 Commerce and housing credit (total)	0	−2, 188, 991
Subcommittee on Consumer Affairs:		
800 General government (total)	3, 000	3, 000
Subcommittee on Domestic Monetary Policy:		
900 Interest	9, 934	9, 934
Committee total	7, 683, 311	−3, 672, 547

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1289

JESSE KUO TANG AND SHARON KUO TANG

SEPTEMBER 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

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Ms. HOLTZMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 935]

The Committee on the Judiciary, to whom was referred the bill (H.R. 935), for the relief of Jesse Kuo Tang and Sharon Kuo Tang having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Jesse Kuo Tang and Sharon Kuo Tang may be classified as children within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in their behalf by Mr. and Mrs. Stanley Chih-Chin Tang, citizens of the United States, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

PURPOSE OF THE BILL

The purpose of this bill, as amended, is to facilitate the admission into the United States of the prospective adopted children of United States citizens. The bill has been amended in accordance with established precedents.

GENERAL INFORMATION

The beneficiaries of this bill are 17-year-old and 15-year-old natives of Indonesia. They were orphaned in 1974 and their subsequent guardian released them for adoption in Taiwan April 10, 1978. Adoptive father is a teacher with the China Evangelical Seminary in Taiwan. There are no natural children of this marriage. A favorable home-study has been submitted.

The pertinent facts in this case are contained in a letter dated October 31, 1978 from the Commissioner of Immigration and Naturalization to the Chairman of the Committee on the Judiciary regarding a bill then pending for the relief of the same person. That letter and accompanying memorandum read as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., October 31, 1978.

A22639378.
A22640941.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 13006) for the relief of Jesse Kuo Tang and Sharon Kuo Tang, there is attached a memorandum of information concerning the beneficiaries.

The bill provides that for immigration purposes the beneficiaries shall be held and considered to be the natural born alien son and daughter of Stanley Chih-Chin Tang and Nancy Tsou Tang, United States citizens. It also provides that the beneficiaries' natural parents or siblings shall derive no immigration benefits by virtue of such relationship.

Absent enactment of the bill, the beneficiaries, who are natives of Indonesia, are chargeable to the nonpreference portion of the numerical limitation for immigrants and conditional entrants from Indonesia. It is noted that at this time nonpreference immigrant visa numbers are unavailable.

Sincerely,

LEONEL J. CASTILLO,
Commissioner.

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE H.R. 13006

Information concerning this case was obtained from the adoptive parents of the beneficiaries, Stanley Chih-Chin Tang and Nancy Tsou Tang, who are also the interested parties.

The beneficiary, Jesse Kuo Tang, whose name at birth was Kwek Kiang-Jin, was born on July 1, 1961 in Indonesia. The beneficiary, Sharon Kuo Tang, whose name at birth was Kwek Soen-San, was born on March 27, 1964 also in Indonesia. Their natural parents died leaving the beneficiaries orphans in 1974. After an unsatisfactory guardianship following the death of the natural parents, the children were adopted by Stanley Chih-Chin Tang and Nancy Tsou Tang on April 10, 1978 at the District Court of Taipei, Taiwan by proxy. Following the name change and with the consent of the guardian at the adoption proceedings, the beneficiaries have resided with the adoptive parents. Both beneficiaries are presently enrolled in school in Taipei.

Mr. Stanley Chih-Chin Tang was born on August 27, 1923 and Nancy Tsou Tang was born on January 28, 1922. Both interested parties are natives of China and naturalized United States citizens. They were married December 27, 1953, in Hualien, Taiwan. This marriage has been childless.

Mr. Tang is a teacher with the China Evangelical Seminary, Taipei, Taiwan with a salary of approximately $683 per month. Mrs. Tang is employed as a manager with Overseas Radio and Television Inc., Taipei, Taiwan earning approximately $385 per month. They report savings of approximately $24,000 and real property valued at approximately $26,000 with no other significant assets.

DEPARTMENT OF STATE,
Washington, D.C., August 11, 1978.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Jesse Kuo Tang and Sharon Kuo Tang, beneficiaries of H.R. 13006, 95th Congress, there is enclosed a memorandum of information concerning the beneficiaries. This memorandum has been submitted by the United States Embassy at Taipei, Taiwan, in whose consular jurisdiction the beneficiaries reside.

The bill would hold and consider the beneficiaries to be the natural-born son and daughter of United States citizens Stanley Chih-Chin Tang and Nancy Tsou Tang, for the purposes of Sections 203(a) and 204 of the Immigration and Nationality Act. It would also provide that the natural parents and brothers or sisters of the beneficiaries shall not by virtue of such relationship be accorded any right, privilege or status under the Immigration and Nationality Act.

Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary
for Congressional Relations.

Enclosure.

SUBMITTED BY THE AMERICAN EMBASSY AT TAIPEI, TAIWAN, REPUBLIC OF CHINA, MEMORANDUM OF INFORMATION CONCERNING H.R. 13006 FOR THE RELIEF OF JESSE KUO TANG AND SHARON KUO TANG

The beneficiary, Jesse Kuo Tang, was born on July 1, 1961 at Jakarta, Indonesia. His original name was Kwek Kiang-Jin. His sister, Sharon Kuo Tang, was born on March 27, 1964 also at Jakarta, Indonesia. Her original name was Kwek Soen-San. They currently reside at Taipei, Taiwan, with their adoptive parents, Reverend Stanley Chih-Chin Tang, and his wife, Nacy Tsou Tang, who are both citizens of the United States.

The beneficiaries' mother, Lo Nai-Siang, died at Jakarta, Indonesia on May 19, 1973. Some 18 months later, on October 30, 1974, their father, Kwek Djoei-Hong, also died, leaving them orphans. There are no other siblings. Prior to her death the beneficiaries' mother had been in contact with her very good friend in Taiwan, Mrs. Chiang (Chen) Hsiu-Chiung. Knowing that she did not have long to live she asked Mrs. Chiang to look after her children, and Mrs. Chiang agreed. When the father subsequently died, the members of the church in Jakarta made arrangements to send the children to Mrs. Chiang in Taiwan. They arrived in Taiwan on January 10, 1975.

After arrival in Taiwan, Jesse and Sharon lived in the home of Mrs. Chiang. Mrs. Chiang has two children of her own and her husband is a retired Chinese Air Force officer. Although Jesse and Sharon lived with them for more than three years, Mr. and Mrs. Chiang did not take any action to adopt them. Jesse and Sharon did not make a good adjustment while they lived with the Chiang family. Early in the year a pastor from the church in Jakarta visited Taiwan. He saw the children, and, realizing the situation, sought the help of Reverend Tang. Arrangements were made for Jesse and Sharon to live with the Reverend and Mrs. Tang, and their lives greatly improved. On April 10, 1978, the Reverend and Mrs. Tang formally adopted Jesse and Sharon.

Although Jesse and Sharon are orphans, they are over 14 years of age. The Tangs, therefore, cannot file immigrant visa petitions on their behalf for immediate relative status under Section 101(b)(1)(F) of the Immigration and Nationality Act (INA). In order to qualify for status under Section 101(b)(1)(E) the children must be under 14 years of age at the time of adoption, and thereafter have been in the legal custody of and have resided with their adopted parents for two years; Jesse and Sharon are not able to fulfill these requirements.

Therefore, for immigration purposes they are classifiable as nonpreference immigrants. Furthermore, Jesse will be required to obtain a labor certification before he can establish nonpreference immigrant status. This labor certification is required under Section 212(a)(14) of the Immigration and Nationality Act because Jesse is 17 years old and is of an employable age. They are chargeable to the numerical limitation for Indonesia. As of June, 1978, nonpreference visa numbers were being made available only to those applicants with a priority date earlier than July 15, 1976. Jesse and Sharon must anticipate waiting an indeterminate period of time before their turns will be reached.

The beneficiaries have taken a medical examination, and the reports show no medical grounds of ineligibility.

REPUBLIC OF CHINA, PROVINCE OF TAIWAN, CITY OF TAIPEI,
EMBASSY OF THE UNITED STATES

Before me, Edward E. Martinez, Consul of the United States of America at Taipei, Taiwan, Republic of China, duly commissioned and qualified, personally appeared

Yen I-tung

who, being duly sworn, deposes and says:

1. That his name is Yen I-tung;

2. That he is an employee of the American Embassy at Taipei, Taiwan, Republic of China;

3. That he is well conversant with the English and Chinese languages;

4. That he prepared the attached English translation of a Chinese notarial certificate;

5. That to the best of his knowledge and belief said English translation is a true and correct version of the original Chinese document, a copy of which is also attached.

And further the deponent saith not.

YEN I-TUNG.

Subscribed and sworn to before me this first day of August, 1978.

[SEAL]

EDWARD E. MARTINEZ,
Consul of the United States of America at Taipei.

TRANSLATION

Notarial Certificate No. (67)-Chia-Nien-Tu-Kung-683

Name(s) or appellation(s) of applicant(s)

Stanley Chih-Chin Tang, male, U.S. citizen, born August 27, 1923, occupation pastor, identification document U.S. passport G258777, residing at 22 (2nd floor), Sublane 43, Lane 501, Pei An Road, Taipei.

Nancy Tsou Tang, female, U.S. citizen, born January 28, 1922, occupation missionary, identification document U.S. passport G258738, residing at same address as above.

Adoptee

Kwek Kiang-Jin, male, native of Kwangtung, born July 1, 1961, occupation blank, identification document ROC national identification card No. F104381208, residing at 39 Sze Ping Street, Taipei

Legal guardian of the above adoptee

Chen Hsiu-Chiung, female, native of Szechuan, born December 20, 1936, occupation blank, identification document ROC national identification card No. A2000810456, residing at same address as above

Name(s) of witnesses, interpreter, or other person when approval or consent by a third party is required

None.

Juristic act or personal rights for which notarization is requested

Stanley Chih-Chin Tang and Nancy Tsou Tang desire to adopt Kwek Kiang-Jin as their son. To effect the adoption, the two parties have requested public notarization of their action.

Purport of the notarization and legal reference

The matters agreed upon by the parties to this action are as follows:

1. The adopters, Stanley Chih-Chin Tang and Nancy Tsou Tang, are desirous of adopting Kwek Kiang-Jin as their son.

2. The adoptee, Kwek Kiang-Jin, is the offspring of Kwek Djoei-Hong and Lo Nai-Siang, husband and wife, now deceased. The adoption is effected with the approval of Chen Hsiu-Chiung, the legal guardian designated by the Court.

3. Upon formalization of the adoption the adoptee will assume the surname of the adopters, changing his name to Jesse Kuo Tang, and will reside with them. The adopters will hereafter be responsible for the protection, education, and support of the adoptee. The rights and obligations of the two parties shall be those provided in the laws of the countries of the adopters and the adoptee.

4. The two parties have entered into this adoption of their own free will, without any reservations or conditions. The natural parents or guardian of the adoptee from now on will refrain from visiting the adoptee and will not maintain contact with him. They will not interfere with the education and upbringing of the adoptee.

5. The adopters may take the adoptee with them when they return to their own country, or to anywhere else. The statutory agent of the adoptee will not intervene.

The undersigned notarial officer, having been informed by parties that they are in agreement to the terms, hereby executes and delivers this certificate of notarization in accordance with paragraph 3 of Article 4 of the Law of Public Notarization.

Date and place of execution of certificate

Executed this 10th day of April, 1978 at the Office of the Public Notary, Taipei District Court, Taiwan.

The above certification was approved by the following persons who were present as being correct and they have affixed their signatures below.

[SEAL]

Applicants:

STANLEY CHIH-CHIN TANG. [SEAL]
NANCY TSOU TANG. [SEAL]
KWEK KIANG-JIN.
CHEN HSIU-CHIUNG. [SEAL]

Notarial Officer at the Office of the Public Notary, Taipei District Court, Taiwan:

HSU CHIA-LIN. [SEAL]

Delivered this 10th day of April, 1978 to the parties at the Office of the Public Notary, Taipei District Court, Taiwan.

[SEAL]

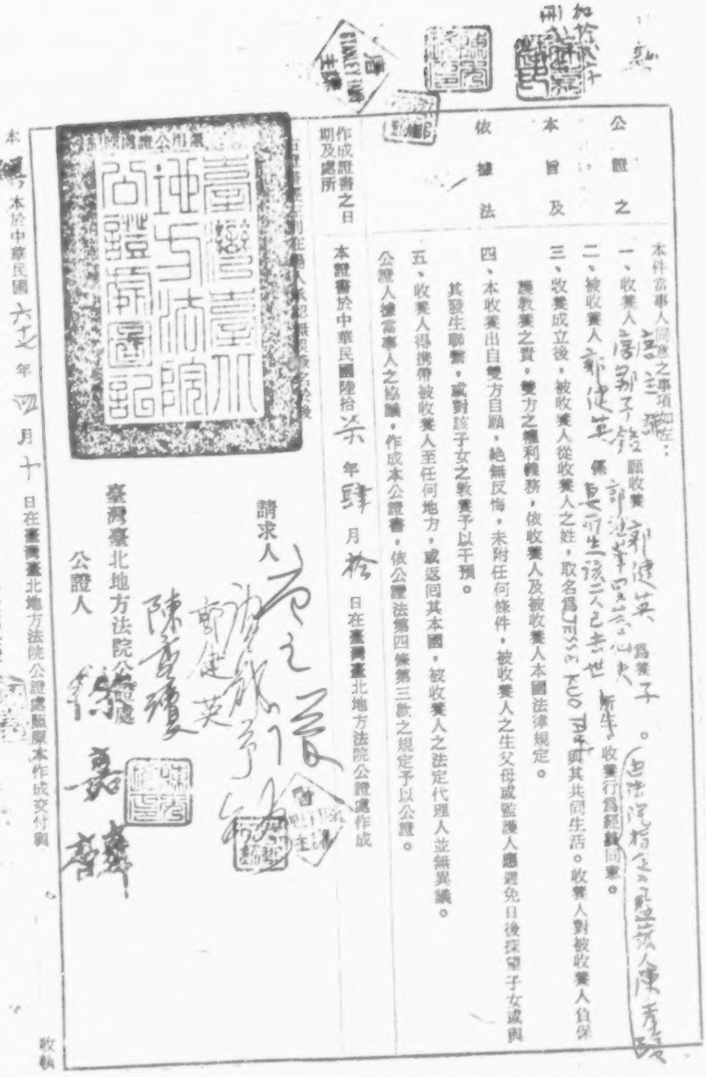
HSU CHIA-LIN,
Notarial Officer.

公証書繕本

(67)甲 年度公字第 683 號

請求人姓名或名稱	性別	籍貫	出生年月日	職業	身份證明文件名稱及其字號	住居所或事務所	備考
收養人： 唐主謙 STANLEY CHIH-CHIEN TANG	男	美國	一九三六、八、三、	牧師	美國護照 Z三八七七七	台北市北安路五〇一巷四三弄二三號二樓	
唐郭予銘 NANCY TSOU TANG	女	〃	一九三三、一、六、	傳教士	Z三八七三八	同	右
被收養人： 郭健英	男	廣東	民五〇、七、一六、		國民身分証 F一四三八三〇八	台北市四平街三九號	
右法定代理人： 陳秀瓊	女	四川	民二三、二、二〇、		A二〇八〇四五六	同	右

證人見證人通譯或已爲同意或允許之第三人姓名	
請求公證之法律行爲或私權事實	唐主謙唐郭予銘願收養郭健英爲養子。雙方之收養行爲， 據其請求公證。



公證之本旨及依據法

本件當事人同意之事項如左：

一、收養人 顏以同 顏郭子銓 願收養 郭建英 為養子。

二、被收養人 郭建英 係 郭淑華與吳金山夫婦所生，該二人已去世 收養行為經由法院指定之監護人陳貴瓊同意。

三、收養成立後，被收養人從收養人之姓，取名為 JESSE KUO TAN 與其共同生活。收養人對被收養人負保護教養之責，雙方之權利義務，依收養人及被收養人本國法律規定。

四、本收養出自雙方自願，絕無反悔，未附任何條件，被收養人之生父母或監護人應避免日後探望子女或與其發生聯繫，或對該子女之教養予以干預。

五、收養人得携帶被收養人至任何地方，或返回其本國，被收養人之法定代理人並無異議。

公證人據當事人之協議，作成本公證書，依公證法第四條第三款之規定予以公證。

作成證書之日期及處所

本證書於中華民國陸拾柒年肆月拾日在臺灣臺北地方法院公證處作成

右證書業經向在場人承認無誤簽名於後

請求人 顏以同 顏郭子銓 郭健英 陳貴瓊

臺灣臺北地方法院公證處

公證人 徐嘉麟

本繕本於中華民國六十七年四月十日在臺灣臺北地方法院公證處照原本作成交付與　　收執

臺灣臺北地方法院公證處公證人

REPUBLIC OF CHINA, PROVINCE OF TAIWAN, CITY OF TAIPEI,
EMBASSY OF THE UNITED STATES OF AMERICA

ss:

Before me, Edward E. Martinez, Consul of the United States of America at Taipei, Taiwan, Republic of China, duly commissioned and qualified, personally appeared

Yen I-tung

who, being duly sworn, deposes and says:

1. That his name is Yen I-tung;

2. That he is an employee of the American Embassy at Taipei, Taiwan, Republic of China;

3. That he is well conversant with the English and Chinese languages;

4. That he prepared the attached English translation of a Chinese material certificate;

5. That to the best of his knowledge and belief said English translation is a true and correct version of the original Chinese document, a copy of which is also attached.

And further the deponent saith not.

YEN I-TUNG.

Subscribed and sworn to before me this first day of August, 1978.

[SEAL]

EDWARD E. MARTINEZ,
Consul of the United States
of America at Taipei.

TRANSLATION

Notarial Certificate No. (67)-Tieng-Nien-Tu-Kung-Tzu-8484

Name(s) or appellation(s) of applicant(s) Adopter(s)

Stanley Chih-Chin Tang, male, U.S. citizen, born August 27, 1923, occupation pastor, identification document U.S. passport G258777, residing at 22 (2nd floor), Sublane 43, Lane 501, Pei An Road, Taipei

Nancy Tsou Tang, female, U.S. citizen, born January 28, 1922, occupation missionary, identification document U.S. passport G258738, residing at same address as above

Adoptee

Kwek, Soen-San, female, native of Kwangtung, born March 27, 1964, occupation student, identification document ROC national identification card No. F203724792, residing at 39 Sze Ping Street, Taipei

Legal guardian of the above adoptee

Chen Hsiu-Chiung, female, native of Szechuan, born on December 20, 1936, occupation merchant, identification document ROC national identification card No. A200810456, residing at same address as above

Remarks

Designated guardian by the Taipei District Court

Name(s) of witnesses, interpreter, or other person when approval or consent by third party is required

None.

Juristic act or personal rights for which notarization is requested

Stanley Chih-Chin Tang and Nancy Tsou Tang desire to adopt Kwek Soen-San as their daughter. To effect the adoption, the two parties have requested public notarization of their action.

Purport of the notarization and legal reference

The matters agreed upon by the parties to this action are as follows:

1. The adopters, Stanley Chih-Chin Tang and Nancy Tsou Tang, are desirous of adopting Soen-San as their daughter.

2. The adoptee, Kwek Soen-San, is the offspring of Kwek Djoei-Hong and Lo Nai-Siang. The adoption is effected with the approval of the designated guardian.

3. Upon formalization of the adoption the adoptee will assume the surname of the adopters, changing her name to Sharon Kuo Tang, and will reside with them. The adopters will hereafter be responsible for the protection, education, and support of the adoptee. The rights and obligations of the two parties shall be those provided in the laws of the countries of the adopters and the adoptee.

4. The two parties have entered into this adoption of their own free will, without any reservations or conditions. The natural parents or guardian of the adoptee from now on will refrain from visiting the adoptee and will not maintain contact with her. They will not interfere with the education and upbringing of the adoptee.

5. The adopters may take the adoptee with them when they return to their own country, or to anywhere else. The statutory agent of the adoptee will not intervene.

The undersigned notarial officer, having been informed by the parties that they are in agreement to the terms, hereby executes and delivers this certificate of notarization in accordance with paragraph 3 of Article 4 of the Law of Public Notarization.

Date and place of execution of certificate

Executed this 10th day of April, 1978 at the Office of the Public Notary, Taipei District Court, Taiwan.

The above certification was approved by the following persons who were present as being correct and they have affixed their signatures below.

[SEAL]

Applicants:

STANLEY CHIH-CHIN TANG. [SEAL]
NANCY TSOU TANG. [SEAL]
KWEK SOEN-SAN.
CHEN HSIU-CHIUNG. [SEAL]

Notarial Officer at the Office of the Public Notary, Taipei District Court, Taiwan:

HSU FANG-LING.

Delivered this 10th day of April, 1978 to the parties at the Office of the Public Notary, Taipei District Court, Taiwan.

HSU FANG-LING,
Notarial Officer.

[SEAL]

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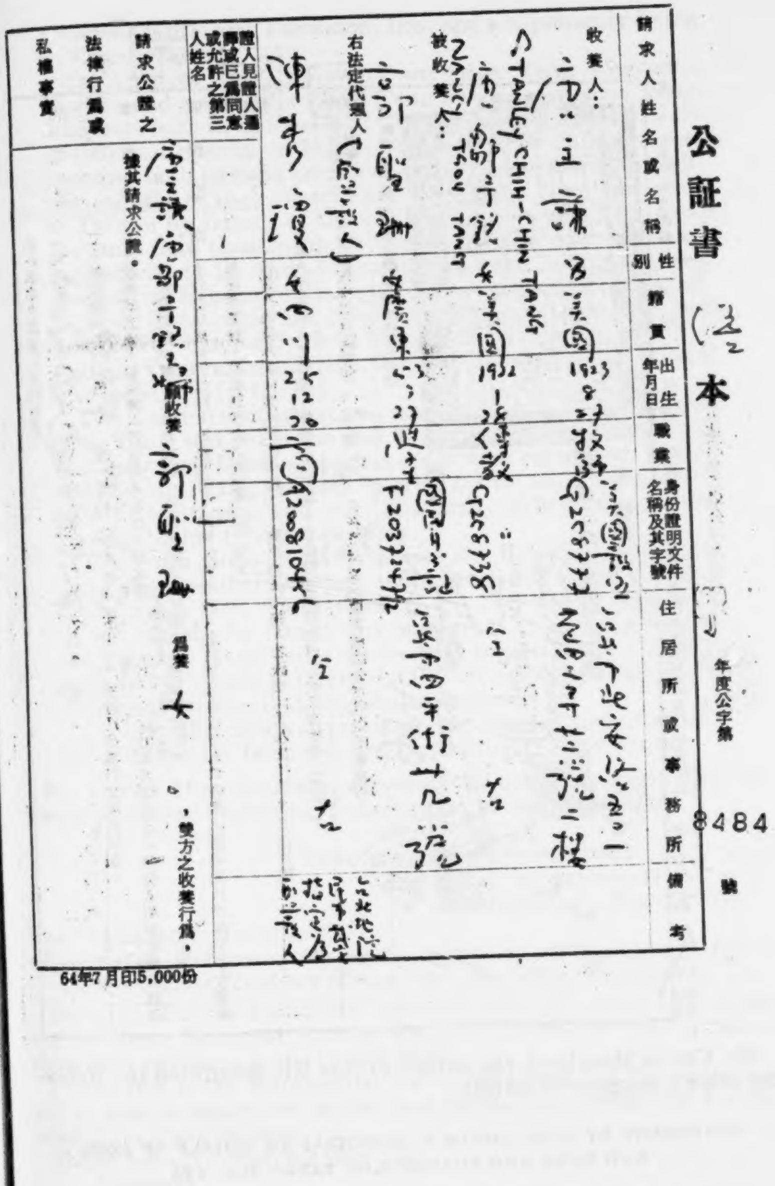
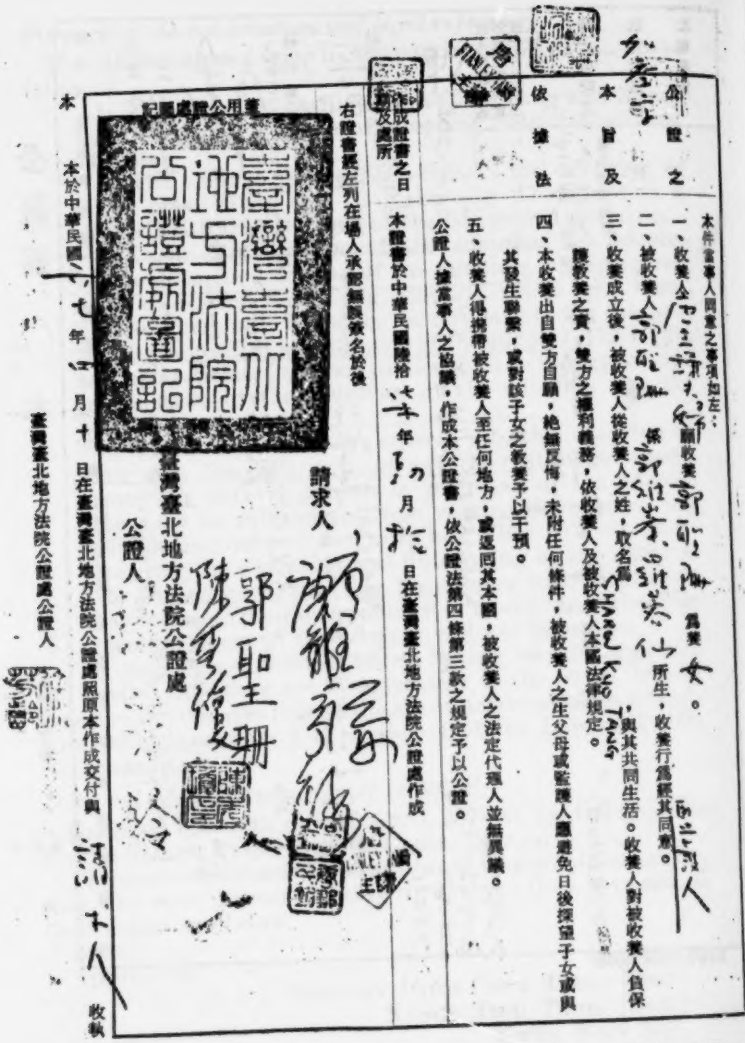


公証書（正）本

年度公字第 8484 號

請求人姓名或名稱	性別	籍貫	出生年月日	職業	身份證明文件名稱及其字號	住居所或事務所	備考
收養人：湯公謙 STANLEY CHIH-CHIEN TANG	男	美國	1923 8 24	教授	美國護照 G2087777	台北市延安路五〇一巷四之二十三號二樓	
湯鄒子鈺 ZENA TSOU TANG	女	美國	1932 1 28	家教	G2258338	仝右	
被收養人：郭聖琳	女	廣東	63 7 27	學生	國民身分證 F203724[illegible]	台北市四平街卅九號	
右法定代理人（收養人）陳素瓊	女	四川	25 12 20	家	國 A200810[illegible]	仝右	台北地院民事裁定指定為監護人
證人通譯人見證人或已爲同意或允許之第三人姓名							
請求公證之法律行爲或私權事實	湯公謙、湯鄒子鈺夫婦收養郭聖琳爲養女，雙方之收養行爲，據其請求公證。						

64年7月印5,000份



公證之本旨及依據法	本件當事人同意之事項如左： 一、收養人 [illegible] 願收養 [illegible] 爲養女。 二、被收養人 [illegible] 係 [illegible]、[illegible] 所生，收養行爲經其同意。 三、收養成立後，被收養人從收養人之姓，取名爲 Sharon Kuo Tang，與其共同生活。收養人對被收養人負保護教養之責，雙方之權利義務，依收養人及被收養人本國法律規定。 四、本收養出自雙方自願，絕無反悔，未附任何條件，被收養人之生父母或監護人應避免日後探望子女或與其發生聯繫，或對該子女之教養予以干預。 五、收養人得携帶被收養人至任何地方，或返回其本國，被收養人之法定代理人並無異議。 公證人據當事人之協議，作成本公證書，依公證法第四條第三款之規定予以公證。
作成證書之日期及處所	本證書於中華民國陸拾 七 年 [illegible] 月 [illegible] 日在臺灣臺北地方法院公證處作成

右證書經左列在場人承認無誤簽名於後

請求人

郭聖珊

臺灣臺北地方法院公證處

公證人

本於中華民國六七年四月十日在臺灣臺北地方法院公證處照原本作成交付與 請求人 收執

臺灣臺北地方法院公證處公證人

Mr. Carlos Moorhead, the author of this bill, submitted the following letter in support of his bill.

STATEMENT BY HON. CARLOS J. MOORHEAD IN BEHALF OF JESSE KUO TANG AND SHARON KUO TANG—H.R. 935

Reverend and Mrs. Stanley Tang, United States citizens and former residents of Pasadena, California, are presently serving as Missionaries in the Far East. They work with

Overseas Radio and Television, Inc., and are presently living in Taipei, Taiwan.

In April of 1978, Reverend and Mrs. Tang adopted a brother and sister, Jesse Kuo Tang and Sharon Kuo Tang, who were born in Indonesia of Chinese parents, Jesse on July 1, 1961 and Sharon on March 27, 1964. These children were orphans, both parents having died in Indonesia within eighteen months of each other. They were taken from Indonesia to Taiwan by friends of their parents with whom they lived for more than three years. It became necessary for other arrangements to be made—the children were facing a severe problem in the home of their guardians and wanted very much to leave. They could not return to Indonesia since they had lost the right to reside there because of having lived for 3¼ years in Taiwan. In addition, they had no relatives in Taiwan who could care for them.

The children's situation was made known to Reverend and Mrs. Tang and, with the full consent of both the children and their guardians, adoption papers were completed. Reverend and Mrs. Tang had been married for 25 years, had no children of their own, and were financially able to assume the responsibility of the two children.

The work done as Missionaries by Reverend and Mrs. Tang requires their moving about from one country to another. Since both children are above 14 years of age, they do not qualify for issuance of immigrant visas. In order for the Tangs to travel from one country to another as a family unit, and to return to their own United States as a family, it is necessary that private legislation be passed.

I believe that this is a very deserving case and trust that this bill will receive favorable and expeditious consideration.

Mr. Carlos Moorhead also supplied the committee with the following document regarding the adoption of the beneficiary.

Congress of the United States,
House of Representatives,
Washington, D.C., May 30, 1979.

Hon. Elizabeth Holtzman,
Chairwoman, Subcommittee on Immigration, Refugees, and International Law, Rayburn House Office Building, Washington, D.C.

Dear Liz: Enclosed with this letter is a copy of a letter I have just received from Reverend Stanley Tang in response to your question about their residency in the United States.

I trust this is the information desired and that the Subcommittee will be able to report out, in the near future, my private bill for the relief of the Tang children.

Thank you very much for your help.

Sincerely,

Carlos J. Moorhead.

Enclosure.

OVERSEAS RADIO & TELEVISION, INC.,
Taipei, Taiwan, May 17, 1979.

Hon. CARLOS J. MOORHEAD,
Rayburn House Office Building,
Wasshington, D.C.

DEAR CONGRESSMAN MOORHEAD: Your May 8th letter with the copy of Chairwoman Elizabeth Holtzman's letter enclosed, has just reached us and I am glad to inform you of our plans for residency in the United States.

Our purpose for temporarily leaving the United States to come overseas was to gain a better understanding of the social situation in Taiwan, which would help me in working out a new method of radio gospel outreach. This involved conducting several experimental projects in evangelism.

The last of these projects will be completed within the next two months and we plan to return to the States by August 1979, to take up residency there and continue my work with Overseas Radio and Television Inc.

It is our sincere hope that our adopted children can be admitted to the United States by the U.S. Immigration authorities before school starts in the fall, so that they may enter at the beginning.

We appreciate very much the assurance of your continued efforts in this matter on our behalf.

Very sincerely,

STANLEY TANG.

Endorsement:

DORIS BROUGHAM,
ORTV-Director for Asia.
LELAND HAGGERTY,
ORTV-Director of Development and Research.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the committee is of the opinion that H.R. 935, amended, should be enacted and accordingly recommends that the bill do pass.

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1290

KIT TUNG

SEPTEMBER 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

Ms. HOLTZMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 936]

The Committee on the Judiciary, to whom was referred the bill (H.R. 936) for the relief of Kit Tung, having considered the same report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to enable the beneficiary to qualify for first preference status as the unmarried daughter of a United States citizen.

STATEMENT OF FACTS

The beneficiary is a 24-year-old native of Hong Kong and national of Great Britain who presently resides with her adoptive mother in California. She last entered the United States in 1977 and has resided with her adoptive mother since that time. Adoption was completed in California March 10, 1978.

The pertinent facts in this case are contained in a letter dated September 8, 1978 from the Commissioner of Immigration and Naturalization to the Chairman of the Committee on the Judiciary regarding a bill then pending for the relief of the same person. That letter and accompanying memorandum read as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., September 8, 1978.

A23 009 277

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill H.R. 11834 for the relief of Kit Tung, there is attached a memorandum of information concerning the beneficiary.

The bill provides that the 23-year-old beneficiary shall be held and considered to be the natural-born alien daughter of Mrs. June Armand, a citizen of the United States. It further provides that the natural parents, brothers and sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Absent enactment of the bill, the beneficiary, a native of Hong Kong, would be chargeable to the preference portion of the numerical limitation for immigrants from countries in the Eastern Hemisphere.

Sincerely,

LEONEL J. CASTILLO,
Commissioner.

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE H.R. 11834

Information concerning the case was obtained from Miss Kit Tung, the beneficiary, and Mrs. June Armand, the interested party and adoptive parent of the beneficiary.

The beneficiary, native of Hong Kong and national of Great Britain, was born on August 16, 1954 and is single. She resides in Los Angeles, California with her adoptive mother. The beneficiary graduated from high school and completed one year of college where she earned the equivalent of a teaching credential in her native country. She has completed three years of college in Los Angeles, California and intends to continue her education next year towards a degree in medical technology. She is employed 22 hours per week as a bakery sales clerk and earns $2.81 per hour. The beneficiary receives $200 per month from her sponsor and has assets of $10,000 in a savings account. Her natural parents, sister and two brothers reside in Hong Kong.

The beneficiary first entered the United States in September 1975 as a nonimmigrant student and departed in July 1977. Her last entry was on August 28, 1977 as a nonimmigrant student and she is authorized to remain until August 27, 1978. The adoption took place in Los Angeles Superior Court on March 10, 1978. A copy of the adoption decree is attached.

The beneficiary's adoptive mother, June La Belle Armand, was born in Carlisle, Illinois on December 5, 1917. She completed ten years of formal education and was a professional dancer for ten years. Since 1967 she has been employed in telephone sales relating to financing at a monthly salary of $800. Her assets consist of furnishings valued at $7,000 and a saving account of $10,000. Mrs. Armand's last marriage terminated in 1966. No children were born of this union; however, she has a 31-year-old son by a previous marriage.

Mrs. Armand first met the beneficiary in June 1977 and saw her two or three times a week until the beneficiary moved in to share her apartment in September 1977. She stated that she had always wanted a daughter but that she had several miscarriages in the past and could not produce one. She further stated that she wanted her adoptive daughter to finish college and that she plans to make her a beneficiary of her will.

Superior Court of the State of California
For the County of Los Angeles

In the Matter of the Adoption of
Kit Bing Tung,
An Adult Person

No. Ad 2665 G

DECREE OF ADOPTION (ADULT)

The petition of June La Belle Armand and Kit Bing Tung came on regularly to be heard on March 10, 1978, in Department NC"D", before Honorable Robert Schifferman, Judge presiding. William F. Heyler appearing as attorney for petitioners, there appearing before the Court the petitioners, June La Belle Armand and Kit Bing Tung, who were examined by the Court, each separately, from which examination it is found that the petitioner, Kit Bing Tung, the person being adopted herein is younger than petitioner, June La Belle Armand, the adopting person herein, and that said petitioners are residents of the County of Los Angeles, State of California, that petitioners have heretofore and on or about the 26th day of January, 1978, entered into an agreement in writing wherein and whereby petitioner, June La Belle Armand, agreed to adopt petitioner, Kit Bing Chung, and the latter agreed to be adopted by the former, and the said parties agreed to assume toward each other the legal relation of parent and child and to have all of the rights and be subject to all the duties and responsibilities of that relationship; that no consent of any spouse is necessary in that both petitioners are unmarried; and the Court, after hearing the evidence, being satisfied and finding that the said adoption will be for the best interest of the parties and in the public interest, and that there is no reason why the petition herein should not be granted.

It is hereby ordered, adjudged and decreed that the petition herein be and hereby is granted and that said agreement of adoption is hereby approved, and that said petitioner, Kit Bing Tung, shall be and is hereby adopted by petitioner herein, June La Belle Armand, and that said Kit Bing Tung shall hereafter be regarded and treated in all respects as the child of June La Belle Armand and hereafter bear the name of Kit Bing Armand.

Dated: March 10, 1978

Robert Schifferman,
Judge of the Superior Court.

On August 1, 1978, the Department of State submitted a report on legislation then pending for the same person. A copy of that report reads as follows:

Department of State,
Washington, D.C., July 27, 1978.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

Dear Mr. Chairman: In reference to your request for a report concerning the case of Kit Tung, beneficiary of H.R. 11834, 95th Congress, there is enclosed a memorandum of information concerning the beneficiary. This memorandum has been submitted by the United States Consulate General at Hong Kong, in whose consular jurisdiction the beneficiary resided.

The bill would grant the beneficiary first preference immigrant visa status as the unmarried natural-born alien daughter of Mrs. June Armand, a United States citizen. It would also provide that the natural parents or brothers or sisters of the beneficiary shall not by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary
for Congressional Relations.

Enclosure: Memorandum of Information.

[Submitted by the American Consulate General at Hong Kong]

MEMORANDUM OF INFORMATION CONCERNING H.R. 11834 FOR THE RELIEF OF KIT TUNG (AKA KIT BING TUNG; KIT PING TUNG)

The beneficiary, Kit Tung was born on August 16, 1954 in Hong Kong where she resided at the time of her visa application.

On July 11, 1975 the beneficiary was issued a student visa at the American Consulate General in Hong Kong for the purpose of pursuing a four year undergraduate course of study at the Glendale Community College in California. On her visa application the beneficiary stated that she was single, had recently graduated from Form VI, the equivalent of the American 12th grade, and that she intended to reside with an uncle in the United States. She also had worked several months as a part time teacher for a Hong Kong school.

The beneficiary's parents, who were interviewed on behalf of Miss Tung, furnished the Consulate with additional information concerning the beneficiary. They stated that the beneficiary has two brothers, one sister and several uncles, aunts and cousins, all residing in Hong Kong. The father was aware that a United States citizen wished to adopt his daughter and stated that he had no objection to the adoption.

There is no immigrant visa petition on behalf of the beneficiary on file at the Consulate General.

A check of the Consulate General's files and those of the Royal Hong Kong police show no grounds of excludability or criminal record.

Mr. Carlos Moorhead, the author of this bill, submitted the following statement in support of his bill:

STATEMENT

Miss Kit Tung, a native of Hong Kong and a British citizen, is presently living in Glendale, California, as the legally adopted daughter of Mrs. June Armand. Glendale is located within California's 22nd district. Mrs. Armand, whose only child, a son, is married, lived alone until Miss Tung was invited to move in with her.

In 1975, Miss Tung was admitted to the United States on a student visa. While living in Hong Kong, she had become acquainted with the sister and family of Mrs. Armand who lived in Southeast Asia for ten years where the sister's husband was a pilot. Mrs. Armand had nothing whatever to do with Kit's coming to the United States, but after she arrived in Glendale and was settled into her school, Mrs. Armand invited her to come and live in her house. A very, very close relationship began and has built up over the years.

On March 10, 1978, Kit was adopted by Mrs. Armand, who has plans to help Kit finish her education and intends to make her a beneficiary of her will. Mrs. Armand, as well as her son and daughter-in-law, has accepted Kit into the family as a part of a very closeknit family circle. Mrs. Armand feels that Kit has filled a very great void in her life and that she now has the daughter she has always wanted but was never able to have. She believes that Kit's coming into her life at this time has been an answer to her deep desires and prayers for a daughter; Kit, on the other hand, feels that a miracle has occurred in her life.

My personal view is that this is sincerely a close, personal familial relationship that has grown up between Kit Tung and her adopted family. I believe that the adoption took place because of that close family relationship and not for any ulterior motives. I also believe that this is truly a case where compassion needs to be applied, and that Kit Tung should be allowed to become a United States Citizen.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 936 should be enacted and accordingly recommends that the bill do pass.

○

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1291

RAYMOND M. GEE

September 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

Ms. Holtzman, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3096]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3096), for the relief of Raymond M. Gee, having considered the same report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to facilitate the adjustment of status to that of permanent residence in the United States of the adopted child of United States citizens.

GENERAL INFORMATION

The beneficiary of this bill is a 19-year-old native and citizen of Panama who was adopted in California May 11, 1978. The adoptive parents met the beneficiary while they were stationed in Panama during the adoptive father's service in the United States Army. He had resided in the United States with an aunt and uncle from the age of six until fifteen and attended school in Texas through the ninth grade. Adoptive parents have two natural children ages 6 and 4. A favorable home study has been submitted.

The pertinent facts in this case are contained in a letter dated November 8, 1979 from the Commissioner of Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. That letter and accompanying memorandum read as follows:

U.S. Department of Justice,
Immigration and Naturalization Service,
Washington, D.C., November 8, 1979.

A23 645 597

Hon. Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary,
House of Representatives, Washington ,D.C.

Dear Mr. Chairman: In response to your request for a report relative to the bill (H.R. 3096) for the relief of Raymond M. Gee, there is attached a memorandum of information concerning the beneficiary.

The bill would provide that the nineteen-year-old beneficiary, who was adopted by United States citizens, he classified as a child and be granted immediate relative status.

Absent enactment of the bill, the beneficiary, a native of Panama, would be chargeable to the nonpreference portion of the numerical limitation for immigrants and conditional entrants.

Sincerely,

Cornelius J. Leary,
Executive Assistant
(For the Commissioner).

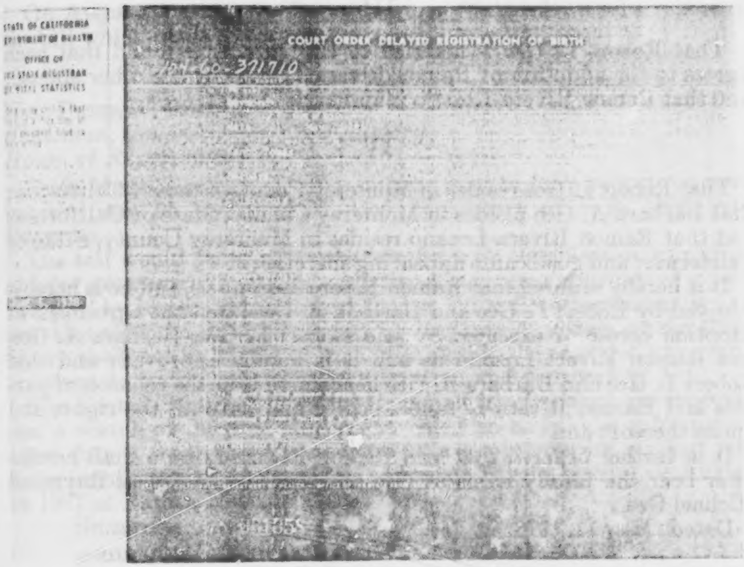
Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE H.R. 3096

The beneficiary, Raymond Michael Gee, a native and citizen of Panama was born on May 2, 1960. He was born as Ramon Rivera-Lozano to Ramon Rivera-Roja and Margarita Lozano-Arosamena who are citizens of Panama. The natural parents presently live in Panama. The beneficiary is single and lives with his adoptive parents, Mr. and Mrs. Raymond Gee, along with their two children ages 5 and 7 years old who were born in Colorado Springs, Colorado. The family lives in Midwest City, Oklahoma. The beneficiary is a 12th grade student at Midwest City High School. He has not been employed and is fully supported by his adoptive parents.

The beneficiary was admitted to the United States on August 23, 1977 as a foreign student. An extension of stay was authorized until May 20, 1979. Deportation proceedings have not been instituted.

The beneficiary became acquainted with Mr. and Mrs. Gee in the Panama Canal Zone while Mr. Gee was serving with the United States Army. He lived with Mr. and Mrs. Gee from May 1975 until August 1977 at Ft. Clayton, Panama Canal Zone. Mr. Gee was transferred to Ft. Ord, California where he and his family along with the beneficiary lived until November 1978. The beneficiary was adopted by Mr. and Mrs. Gee on May 11, 1978 at Monterrey, California. The beneficiary was adopted at age 18 without the consent of his natural parents. A copy of his delayed birth certificate is attached. Mr. Gee was discharged from the Army in November 1978 after serving from June 1970 and the family moved to Midwest City, Oklahoma. He is presently employed as an Admissions Officer by the United Electronics Institute in Oklahoma City at a yearly salary of $18,000. Mrs. Gee is employed by the Oklahoma Agriculture Department as a seed analyst at a yearly salary of $6,000.



STATE OF CALIFORNIA
DEPARTMENT OF HEALTH
OFFICE OF
THE STATE REGISTRAR
OF VITAL STATISTICS

COURT ORDER DELAYED REGISTRATION OF BIRTH

Superior Court of California, County of Monterey

IN THE MATTER OF
THE ADULT ADOPTION PETITION OF
ROBERT L. GEE AND BARBARA A. GEE

CASE NUMBER MA959

ORDER OF ADOPTION

The petition of Robert L. Gee and Barbara A. Gee, for an order of adoption came before me this 11 day of May, 1978, each of the petitioners and Ramon Rivera-Lozano appearing in person, and the Court having read the petition on file herein and having heard the evidence hereby finds:

I

That the best interest of said parties and the public interest will be served by the adoption prayed for in said petition and that there is no reason why said petition should not be granted.

II

That Robert L. Gee is an adult person of the age of 29 years, that Barbara A. Gee is an adult person at the age of 30 years, and that Ramon Rivera-Lozano is an adult person of the age of 18 years.

III

That Robert L. Gee is married to Barbara A. Gee and that each agrees to the adoption of Ramon Rivera-Lozano by the other spouse; and that Ramon Rivera-Lozano is unmarried.

IV

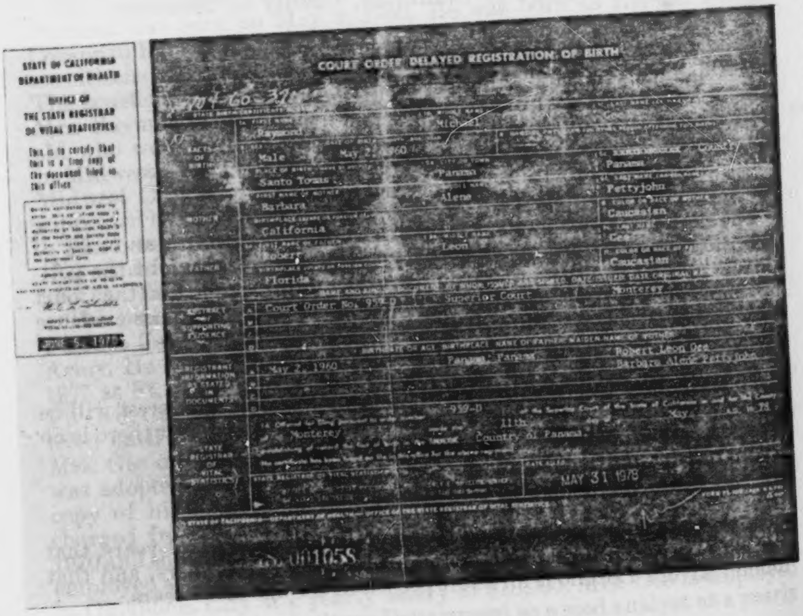
That Robert L. Gee resides in Monterey County, State of California; that Barbara A. Gee resides in Monterey County, State of California; and that Ramon Rivera-Lozano resides in Monterey County, State of California; and good cause appearing therefor;

It is hereby ordered that Ramon Rivera-Lozano be, and he is hereby, adopted by Robert L. Gee and Barbara A. Gee; that the agreement of adoption heretofor executed by said Robert L. Gee, Barbara A. Gee, and Ramon Rivera-Lozano be and it is hereby approved; and that Robert L. Gee and Barbara A. Gee henceforth bear the relation of parents and Ramon Rivera-Lozano as child and have all the rights and duties thereof; and

It is further ordered that said Ramon Rivera-Lozano shall hereinafter bear the family name of Gee and shall be known as Raymond Michael Gee.

Dated: May 11, 1978.

Ralph M. Drummond,
Judge of the Superior Court.



STATE OF CALIFORNIA
DEPARTMENT OF HEALTH
OFFICE OF
THE STATE REGISTRAR
OF VITAL STATISTICS
This is to certify that this is a true copy of the document filed in this office

JUNE 5, 1978

COURT ORDER DELAYED REGISTRATION OF BIRTH

Raymond
Michael
Male
May 2, 1960
Panama
Santo Tomas
Panama
Barbara
Alene
Pettyjohn
Caucasian
California
Robert
Leon
Gee
Caucasian
Florida
Court Order No. 959-D
Superior Court
Monterey
May 2, 1960
Panama, Panama
Robert Leon Gee
Barbara Alene Pettyjohn
959-D
11th
May
78
Monterey
Country of Panama
MAY 31 1978
001058

On August 17, 1979, the Department of State submitted a report on the bill which reads as follows:

DEPARTMENT OF STATE,
Washington, D.C., August 17, 1979.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: I refer to your request for a report concerning the case of Raymond M. Gee, beneficiary of H.R. 3096, 96th Congress.

The bill would provide for the beneficiary's classification as a child and for granting of immediate relative status upon approval of a petition filed by Mr. and Mrs. Robert L. Gee, United States citizens. It also provides that the natural parents or brothers or sisters of the beneficiary shall not by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

The United States Embassy at Panama City, Panama, has reported that a search of the visa files has revealed no additional information other than a record of the issuance of a nonimmigrant student visa to the beenficiary, under the name of Ramon Rivera Lozano, on August 18, 1977 at Balboa Heights, Canal Zone.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.

Mr. Tom Steed, the author of this bill, submitted the following statement in support of his bill:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 4, 1980.

Hon. ELIZABETH HOLTZMAN,
Chairwoman, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR LIZ: Thank you so much for your letter of May 27th advising your Subcommittee is of the opinion my bill H.R. 3096, for the relief of Raymond M. Gee, should be reported favorably to the full Committee.

This is indeed welcome news and I would like to urge the full Committee to give early and favorable consideration to H.R. 3096. This bill has my full support and I am most anxious to obtain passage during this Congress. Any assistance you are able to provide will be deeply appreciated.

With kind regards, I am
Sincerely yours,

TOM STEED.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 3096 should be enacted and accordingly recommends that the bill do pass.

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[illegible]

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1292

EILEEN ANGELLA CROSSDALE

September 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

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Ms. Holtzman, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany 3869]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3869) for the relief of Eileen Angella Crossdale, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Amend the title so as to read:

For the relief of Eileen Angella Crosdale

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Eileen Angella Crosdale may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by William Alexander and Linda Beatrice Crosdale, a lawfully resident alien and a citizen of the United States, respectively, pursuant to section 204 of the Act: Provided, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

PURPOSE OF THE BILL

The purpose of this bill, as amended, is to facilitate the admission into the United States of the adopted child of a lawful permanent resident alien and United States citizen, respectively. The bill has been amended to reflect the recent naturalization of one of the adoptive parents and to correct a spelling error in the beneficiary's name.

GENERAL INFORMATION

Beneficiary is a 20-year-old native and citizen of Jamaica who was adopted in Jamaica at the age of fourteen. She had resided with her adoptive parents since infancy and continued to reside with them four years after the formal adoption. She is supported financially by the adoptive parents. Three natural children of the adoptive parents currently reside with them. A favorable home study has been submitted.

The pertinent facts in this case are contained in letters dated March 6, 1980 and May 20, 1980 from the Commissioner of Immigration and Naturalization to the Chairman of the Committee on the Judiciary. Those letters and accompanying memorandum read as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., March 6, 1980.

A23291574

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your request for a report relative to the bill (H.R. 3869) for the relief of Eileen Angella Crosdale. There is attached a memorandum of information concerning the beneficiary.

The bill would provide that, for the purpose of filing a second preference visa petition, the beneficiary be considered the natural daughter of Mr. and Mrs. William Alexander Crosdale. It would also provide that the natural parents, or brothers and sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Absent enactments of the bill, the beneficiary, a native of Jamaica, is chargeable to the numerical limitation for immigrants and conditional entrants.

Sincerely,

CORNELIUS J. LEARY,
Executive Assistant.

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILE RE H.R. 3869

Information concerning this case was obtained from Mr. and Mrs. William Alexander Crosdale, the adoptive parents of the beneficiary.

The beneficiary, Eileen Angella Crosdale, a native and citizen of Jamaica, born April 2, 1960, was abandoned by her parents at age six months and was taken in and supported by Mr. and Mrs. William Alexander Crosdale. She was adopted by Mr. and Mrs. Crosdale on June 26, 1974, in the Magistrate's Court, St. Andrew, Jamaica, and she resided with her adoptive parents in Jamaica until December 1978. She has never been in the United States, is single and currently attends high school in Kingston, Jamaica. The beneficiary has no assets and is supported by funds sent to Jamaica by her adoptive parents. Her natural mother is dead and her natural father is unknown.

Mr. and Mrs. Crosdale are natives of Jamaica who were born November 24, 1914, and March 10, 1923, respectively. They were married December 10, 1955, and reside in Rochester, New York with three of their seven children.

Mrs. Crosdale, a naturalized United States citizen, is employed as a custodian with an annual wage of $11,244. Mr. Crosdale, a citizen of

Jamaica and lawful permanent resident of the United States, is unemployed. Their assets consist of $7,500 in bank savings, two automobiles with a total value of $2,000, personal effects valued at $5,000 and personal property in Jamaica valued at $30,000.

The present Visa Office Bulletin reflects that second preference visa numbers for Jamaica are available only to applicants with a priority date earlier than August 22, 1979.

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., May 20, 1980.

A23291574
Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This refers to H.R. 3869 in behalf of Eileen Angella Crosdale and to your request for additional information.

The beneficiary's adoptive parents have three natural born children residing with them in Rochester, New York: Maria Yolande Crosdale, born February 26, 1961; Merna Morette Crosdale, born October 4, 1963; Conley Curniff Crosdale, born October 8, 1966.

Sincerely,

CORNELIUS J. LEARY,
Executive Assistant.

On January 16, 1980, the Department of State submitted a report on this bill which reads as follows:

DEPARTMENT OF STATE,
Washington, D.C., January 16, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Eileen Angella Crosdale beneficiary of H.R 3869, 96th Congress, there is enclosed a memorandum of information concerning the beneficiary. This momorandum has been submitted by the United States Embassy at Kingston, Jamaica, in whose consular jurisdiction the beneficiary resides.

The bill would provide for the beneficiary's classification as a child and for granting of immediate relative status upon approval of a petition filed by William Alexander and Linda Beatrice Crosdale lawful permanent residents of the United States. It also provides that the natural parents or brothers or sisters of the beneficiary shall not by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary, for Congressional Relations.

Enclosure: Memorandum of Information.

SUBMITTED BY THE AMERICAN EMBASSY AT KINGSTON, JAMAICA

MEMORANDUM OF INFORMATION CONCERNING H.R. 3869 FOR THE RELIEF OF EILEEN ANGELLA CROSDALE

The beneficiary was born on April 2, 1960 at Kingston, St. Andrew, Jamaica. She is single and presently residing at 14 Fulmer Close, Ensom City, Spanish Town, Jamaica. According to the beneficiary she left school in June 1979, having completed twelfth grade. She has not accepted employment since leaving school.

The beneficiary lived with her adopted partents, William and Linda Crosdale, until November 1978. At that time Mr. William Crosdale immigrated to the United States, joining his wife who had immigrated some years earlier. Mr. and Mrs. Crosdale live in Rochester, New York. The beneficiary's natural mother is deceased and the whereabouts of the natural father is unknown.

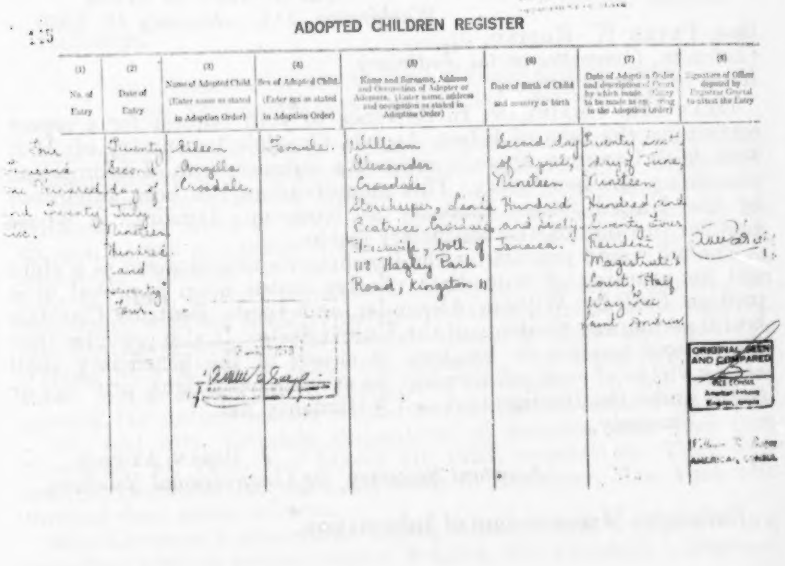
On June 26, 1974 the beneficiary was formally adopted at the Resident Magistrate Court, Half Way Tree, St. Andrew, Jamaica by William Alexander Crosdale and Linda Beatrice Crosdale.

As the beneficiary was over the age of fourteen at the time of her legal adoption, she does not meet the definition of a child in Section 101(b)(1)(E) of the Immigration and Nationality Act. There are enclosed copies of the adoption order.

The Embassy's investigation revealed no derogatory information concerning the beneficiary.

The beneficiary underwent a medical examination on December 21, 1979 and was found to be in good health.

Enclosures: Adoption Register.



ADOPTED CHILDREN REGISTER

(1) No. of Entry	(2) Date of Entry	(3) Name of Adopted Child (Enter name as stated in Adoption Order)	(4) Sex of Adopted Child (Enter sex as stated in Adoption Order)	(5) Name and Surname, Address and Occupation of Adopter or Adopters. (Enter name, address and occupation as stated in Adoption Order)	(6) Date of Birth of Child and country of birth	(7) Date of Adoption Order and description of Court by which made. (Entry to be made as appearing in the Adoption Order)	(8) Signature of Officer deputed by Registrar General to attest the Entry
Four Thousand One Hundred and Seventy One.	Twenty Second day of July Nineteen Hundred and Seventy Four.	Eileen Angella Crosdale.	Female.	William Alexander Crosdale Storekeeper, Linda Beatrice Crosdale Housewife, both of 118 Hagley Park Road, Kingston 11	Second day of April, Nineteen Hundred and Sixty. Jamaica.	Twenty Sixth day of June, Nineteen Hundred and Seventy Four Resident Magistrate's Court, Half Way Tree Saint Andrew	ORIGINAL SEEN AND COMPARED American Embassy Kingston, Jamaica William T. [illegible] AMERICAN CONSUL

Mr. Horton, the author of this bill, has submitted the following statement in support of his bill:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington D.C., June 6, 1980.

STATEMENT OF SUPPORT BY CONGRESSMAN FRANK HORTON

I am pleased to offer my strong support for positive action on my bill H.R. 3869, for the relief of Eileen Angella Crosdale.

In April of 1977, I first wrote to Ambassador Sumner Gerard on behalf of Eileen and her mother's petition for her. Mrs. Linda Crosdale had taken care of Eileen since she was six months old. Adoption proceedings were started when Eileen was thirteen years old and were finalized when she was fourteen. She was, therefore, not eligible for an immigrant visa as Mrs. Crosdale's adopted daughter.

All of Mrs. Crosdale's family reside in the United States with the exception of Eileen who is still in Jamaica. She is, of course, very lonely and unhappy without her family.

After all administrative remedies were exhausted, H.R. 3869 was introduced on Eileen's behalf.

Passage of this bill will allow Eileen Angella Crosdale to join her family in the United States. Positive action is requested for humanitarian and compassionate reasons.

FRANK HORTON,
Member of Congress.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been recieved from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 3869, amended, should be enacted and accordingly recommends that the bill do pass.

○

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1293

ANNETTE JUTTA WOHRLE

September 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

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Ms. Holtzman, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 4522]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4522) for the relief of Annette Jutta Wohrle having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Annette Jutta Wohrle may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon arrival of a petition filed in her behalf by Mr. and Mrs. Hans Wohrle, citizens of the United States, pursuant to section 204 of the Act: Provided, That the natural parents or brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

PURPOSE OF THE BILL

The purpose of this bill, as amended, is to facilitate the adjustment of status to that of permanent residence in the United States of the adopted daughter of citizens of the United States. The bill has been amended in accordance with established precedents.

GENERAL INFORMATION

Beneficiary is a 19-year-old native and citizen of the Federal Republic of Germany who was adopted in the United States January 1979. Her mother had been terminally ill for an extended length of time and as a result the beneficiary resided in foster homes periodically. She entered the United States in 1976 as a student and has resided with her aunt and uncle, who are the adoptive parents, since that time. A favorable home study has been submitted.

The pertinent facts in this case are contained in a letter dated February 26, 1980 from the Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. That letter and accompanying memorandum read as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., February 26, 1980.

A23 277 680

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the Bill (H.R. 4522) for the relief of Annette Jutta Wohrle, there is attached a Memorandum of Information concerning the beneficiary.

The Bill would grant the beneficiary permanent residence in the United States as of the date of its enactment upon payment of the required visa fee. It would also direct that a visa number deduction be made.

The beneficiary, a native of the Federal Republic of Germany, is chargeable to the nonpreference portion of the numerical limitations for immigrants and conditional entrants.

Sincerely,

CORNELIUS J. LEARY
(For Acting Commissioner).

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE H.R. 4522

The beneficiary, Annette Jutta Wohrle, a native and citizen of the Federal Republic of Germany, was born on July 29, 1961. She resides in Stoneham, Massachusetts, with her adoptive parents, Hans and Margaret Wohrle, who are in fact the beneficiary's aunt and uncle. Her natural mother is deceased, and she is estranged from her natural father. The beneficiary was legally adopted in the state of Massachusetts by her aunt and uncle on January 30, 1979; however, she cannot realize any Immigration benefit from the relationship since the adoption took place after her fourteenth birthday. The beneficiary graduated from Stoneham High School, Stoneham, Massachusetts, in June of 1979 and is presently attending Boston College, Boston, Massachusetts. She is totally dependent on her adoptive parents for her support. Her adoptive father, Hans Wohrle, is employed as a millright at an annual salary of $20,000.00. He owns his own home with a fair market value of approximately $75,000.00 on which there is an outstanding mortgage of approximately $10,000.00. The beneficiary's adoptive mother is also employed as a school teacher.

The beneficiary initially entered the United States on June 28, 1976, as a nonimmigrant student to attend Stoneham High School. She briefly returned to the Federal Republic of Germany in the summer of 1978 and re-entered the United States on August 10, 1978, again as a student authorized to remain in the United States with extensions until June 30, 1980. Since her initial entry, the beneficiary has resided in Stoneham, Massachusetts, with her adoptive parents. Deportation proceedings have not been initiated against the Subject.

The beneficiary has never resided with her natural father, and due to the illness of her natural mother, she had been residing in foster homes in the Federal Republic of Germany prior to her entry to the United States. The beneficiary has four siblings who still reside in the Federal Republic of Germany, but she has had no contact with them for several years. Her adoptive parents decided to adopt the beneficiary upon learning that her natural mother was terminally ill and initiated the necessary steps for the legal adoption. It is the intention of her adopted parents to provide a stable home environment for the beneficiary and to provide for her education. Prior to her death, the beneficiary's mother unconditionally surrendered the child for adoption as did her natural father.

On December 27, 1979 and January 16, 1980, the Department of State submitted reports on this bill which read as follows:

DEPARTMENT OF STATE,
Washington, D.C., December 27, 1979.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: I refer to your request for a report concerning the case of Annette Jutta Wohrle, beneficiary of H.R. 4522, 96th Congress.

The bill would grant the beneficiary permanent residence in the United States as of the date of enactment upon payment of the required visa fee. It also provides for the deduction of one number from the total number of immigrants and conditional entrants who may be admitted from the beneficiary's country of birth.

The United States Consulate General at Hamburg has reported that a search of its files has revealed no record relating to the beneficiary. Since the beneficiary appears to have entered the United States in 1976 as the holder of a student visa, it is presumed that her visa application was destroyed in accordance with applicable instructions.

A letter sent to the beneficiary's address in West Germany was returned, indicating that the addressee had moved and no forwarding address was available.

Local clearances and police checks have been initiated and the Committee will be informed as soon as they are completed.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary for Congressional Relations.

Department of State,
Washington, D.C., January 16, 1980.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

Dear Mr. Chairman: The United States Consulate General at Hamburg, Germany, has reported that a check of the local police has developed no derogatory information concerning the case of Annette Jutta Wohrle, beneficiary of H.R. 4522, 96th Congress.

Sincerely,

J. Brian Atwood,
Assistant Secretary for Congressional Relations.

Mr. Markey, the author of this bill, submitted the following statement of support on behalf of his bill.

Congress of the United States,
House of Representatives,
Washington, D.C., June 20, 1980.

Hon. Elizabeth Holtzman,
Chairwoman, Subcommittee on Immigration, Citizenship, and International Law, Washington, D.C.

Dear Liz: This is in regard to H.R. 4522, proposed private legislation regarding Ms. Annette Wohrle. If approved, this legislation will enable Ms. Wohrle to become a lawful permanent resident of the United States.

Having been the victim of illegitimate birth, Annette has faced numerous hardships during her childhood. Until her adoption by Hans and Margaret Wohrle, Annette knew little of family life. Unwanted by her mother, she was placed in several foster homes until her aunt and uncle arranged for her departure.

Since her arrival in the United States, Annette has undergone many positive changes. Her newly adoptive parents are loving, caring and have provided a new life for Annette. A noticeable improvement has resulted for the girl, much of which can be attributed to her new parents.

With administrative remedies unavailable, the Wohrle's only option is private legislation. Given the merits of Ms. Wohrle's case, I wholeheartedly support H.R. 4522.

Sincerely,

Edward J. Markey,
Member of Congress.

Mr. Markey also submitted the following documents in support of his bill.

(AC 139)

No. ......

[G.L., c. 210, as amended.]

[Birth certificate should accompany petition.]

COMMONWEALTH OF MASSACHUSETTS

TO THE HONORABLE THE JUDGES OF THE PROBATE COURT IN AND FOR THE COUNTY OF MIDDLESEX:

RESPECTFULLY represents Hans Wohrle of Stoneham in said County, Middlesex and Margaret M. Wohrle his wife, that they are of the age of eighteen years or upwards, and are desirous of adopting Annette Jutta Wohrle of Stoneham a child of Hannelore Peuschel of 3008 Garbsen 4 Noldestrasse, 55 b ~~in the County of~~ of West Germany ~~and~~ ~~wife~~ which said child was born in Ulm, West Germany on the 29th day of July 19 61; that said child has resided in the home of said petitioners since June of 1976 which is more than six (6) months from the date hereof; that the best interest of the child would be served by the allowance of the adoption of said child, and that the petitioners are of sufficient ability to bring up said child and to furnish her with suitable nurture and education.

Wherefore the/pray for leave to adopt said child, and that her name may be changed to that of Annette Jutta Wohrle

Dated this 7th day of December 1978.

Mailing Address

Hans Wöhrle

Margaret M. Wohrle

Middlesex, ss. Probate Court

December 7 1978.

Notice to the Department of Public Welfare is hereby waived.

.... Judge of Probate Court.

I, the child above-named, being above the age of twelve years, do hereby consent to the adoption above prayed for.

Dated December 7 1978.

Annette J. Wohrle

Nr. 5 der Urkundenrolle Jahrgang 1979

ADOPTION SURRENDER

(G.L., c. 210, sec. 2)

We XX as the Natural Mother & Father, never having married of Annette Jutta Wohrle, age 17, of the female sex, born in Ulm, West Germany, on July 29, 1961, do hereby voluntarily and unconditionally surrender Annette Jutta Wohrle to the care and custody of Hans Wohrle and Margaret M. Wohrle for the purpose of adoption or other disposition as may be made by a Court of competent jurisdiction. I waive notice of any legal proceeding affecting the custody, guardianship, adoption or other disposition of said case.

I UNDERSTAND THAT THIS SURRENDER IS FINAL AND CANNOT BE REVOKED.

Hannelore Peuschel geb. Wöhrle
(Hannelore Peuschel)

On this 12th day of January 1979, before me personally came and appeared Hannelore Peuschel and in my presence duly executed the foregoing instrument, and she acknowledged to me that she executed the same as her free act and deed, fully cognizant of its irrevocability.

Date 12th January 1979

State of German Federal Republik

Manfred Balzer
Notary Public

County of Hannover

Signed by Hannelore Peuschel as her freely executed consent in the presence of each of us, and of each other, who thereafter have hereunto signed our names as witnesses.

Kostenberechnung:
Wert: 3ooo,-- DM
Geb. §§ 141,32,45 11,3o DM
Mehrwertsteuer 6 % -,68 DM
11,98 DM
Notar

(Witness #1)
Address 3o14 Laatzen 3, Stettiner Str. 31

(Witness #2)
Address 3oo7 Gehrden, Kantstr. 6

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the committee is of the opinion that H.R. 4522, amended, should be enacted and accordingly recommends that the bill do pass.

○

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1294

LILIA ESTER CANTU

SEPTEMBER 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

Ms. HOLTZMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5157]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5157) for the relief of Lilia Ester Cantu, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That, in the administration of the Immigration and Nationality Act, Lilia Ester Cantu may be classified as a child within the meaning of section 101(b)(1)(F) of the Act, upon approval of a petition filed in her behalf by Mr. and Mrs. Luis Cantu, a citizen of the United States, and a lawful resident alien, respectively, pursuant to section 204 of the Act: *Provided*, That the natural parents or brothers or sisters of the beneficiaries shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

PURPOSE OF THE BILL

The purpose of this bill, as amended, is to facilitate the adjustment of status to that of permanent residence in the United States of the adopted daughter of a United States citizen and a lawful permanent resident alien. The bill has been amended in accordance with established precedents.

GENERAL INFORMATION

Beneficiary is a 19-year-old native and citizen of Panama who is an orphan and has lived with her adoptive mother in Panama since the age of three. The adoptive mother is her aunt. When the adoptive mother married, the beneficiary continued to reside with her and was subsequently adopted by both parents when the adoptive father was transferred by the Air Force to Spain in 1976. A favorable home study is on file.

The pertinent facts in this case are contained in letters dated March 6, 1980 and May 20, 1980 from the Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. Those letters and accompanying memorandum read as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D.C., March 6, 1980.

A22 292 069

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 5157) for the relief of Lilia Ester Cantu, there is attached a memorandum of information concerning the beneficiary.

The bill would grant the beneficiary permanent residence in the United States as of the date of its enactment, upon payment of the required visa fee. It would also direct that the required visa number deduction be made.

The beneficiary, a native and citizen of Panama, is chargeable to the nonpreference portion of the numerical limitation for immigrants and conditional entrants.

Sincerely,

CORNELIUS J. LEARY,
Executive Assistant
(For the Commissioner).

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE: H.R. 5157

The beneficiary, Lilia Ester Cantu, also known as Lilia Ester Moreno-Gomez, is a native and citizen of Panama, born in Panama City on November 5, 1961. When her natural mother passed away in 1963, the beneficiary began residing with her grandfather and her mother's sister, Mrs. Iluminada Cantu, who was unmarried at that time. When Mrs. Cantu was married on June 25, 1970, to Luis Angel Cantu, the beneficiary lived with them. She was left in Panama with her grandfather when the Cantus were transferred to Spain by the United States Air Force in 1973. When her grandfather died in 1974, the beneficiary was without family until she rejoined the Cantus in Spain in 1975. She was legally adopted by them on July 27, 1976, in Torrejon de Ardoz, Spain.

Luis Angel Cantu is a native United States citizen, born on December 10, 1948, in Alice, Texas. He was honorably discharged from the United States Air Force in October, 1979. Iluminada Cantu is a citizen of Panama, born November 30, 1938, in Bugaba, Panama, and is a lawful permanent resident of the United States. Mrs. Cantu is a housewife. They have six children of their own currently residing with them.

The beneficiary is presently residing in Corpus Christi, Texas with the mother of her adoptive father. Her adoptive parents currently live in Garland, Texas, where Mr. Cantu is employed as a switch specialist by a communications company. The beneficiary is attending the 11th grade in public school and is employed part-time as a checker at a supermarket.

The beneficiary remained in Spain with the Cantus while Mr. Cantu was stationed there. Because the beneficiary was over the age of fourteen at the time she was adopted, she could not qualify for visa preference as the adopted child of a United States citizen. When the family returned to the United States in 1976, the beneficiary was admitted as a visitor and prospective student. Her authorized stay in the United States expired on September 30, 1976. However, because of the compelling humanitarian factors present, the beneficiary's case has been placed in "deferred action" status and no efforts have been made to effect her departure from the United States.

U.S. Department of Justice,
Immigration and Naturalization Service,
Office of the Commissioner,
Washington, D.C., May 20, 1980.

A22 292 069
Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is in response to your letter of April 2, 1980, for additional information relative to the bill (H.R. 5157) for the relief of Lilia Ester Cantu.

The adoptive father, Luis Angel Cantu, has been employed since December 1979 as a switch specialist with MCI Communications, One Main Place, Dallas, Texas, earning $17,500 per year. He owns no property other than a 1976 Toyota Corona and rents his home for $425 a month. Mrs. Cantu is not employed.

The natural children are as follows:

NAME	DATE OF BIRTH
Luis	February 19, 1971
Dennis	May 15, 1972
Jerry	December 16, 1973
Iluminada	December 14, 1974
Magdaline	May 22, 1976
Johanna	February 17, 1979

Sincerely,

Cornelius J. Leary,
Executive Assistant.

On December 14, 1979 and January 3, 1980, the Department of State submitted reports on this bill which read as follows:

Department of State,
Washington, D.C., January 3, 1980.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

Dear Mr. Chairman: I refer to your request for a report concerning the case of Lilia Ester Cantu, beneficiary of H.R. 5157, 96th Congress.

The bill would grant the beneficiary permanent residence in the United States as of the date of enactment upon payment of the required visa fee. It also provides for the deduction of one number from the total number of immigrants and conditional entrants who may be admitted from the beneficiary's country of birth under the provisions of Section 203(a) or, if applicable, under section 202(e).

The Embassy at Panama City, Panama, where the beneficiary was born and the Embassy at Madrid, Spain, where the beneficiary was issued a nonimmigrant visa, have reported having no records derogative or otherwise concerning Miss Cantu. It is assumed that her visa file at Madrid was destroyed in accordance with records disposal regulations.

Sincerely,

J. Brian Atwood,
Assistant Secretary
for Congressional Relations.

The Library of Congress supplied the Committee with the following translation regarding the adoption of the beneficiary:

The Library of Congress,
Congressional Research Service,
Washington, D.C.

Translation (Spanish)

Notary office of Jose Maria Viéitez Lorenzo.
Torrejón de Ardoz.
Copy of the Writ of Adoption.
Granted for Mr. Luis A. Cantú and Mrs. Iluminada G. Cantú.
Year 1976 No. 2.062.

ADOPTION—NUMBER TWO THOUSAND SIXTY-TWO

On July twenty-seven, nineteen hundred seventy-six, in Torrejon de Ardoz, my residence, there appeared before me, José María Viéitez Lorenzo, Notary of the Bar Association of Madrid, *Mr. Luis A. Cantú*, adult, married, of United States nationality, born in the state of Texas (United States), non-commissioned officer in the United States Air Force, assigned to the air base of Torrejón de Ardoz (Madrid), Squadron No. 1989, and holder of ID document No. 1362, issued on September 7, 1973 by the State Department of Public Safety, especially for members of the United States mission assigned to Spain.

Mrs. Iluminada G. Cantú, née Iluminada Gómez González, adult, married to the foregoing, her occupation and with the same domicile as he, [here line below has been obliterated—Trans] . . . Panama. no. 4–65–137, issued on January 19, 1971, and with United States visa no. A–31158313.

And Lilia Esther Moreno Gomez, fourteen years of age, of Panamanian nationality, student, with the same domicile as the foregoing, and holder of passport No. B–068448, of the Republic of Panama, issued on August 4, 1975.

The couple that is appearing does so each one on his own behalf and both spouses consenting and mutually attesting to their capability for this action; and the minor Moreno Gomez, appears in compliance with the provisions of Article 1831, Par. 2° of the Law of Civil Procedure.

I am acquainted, to the extent necessary, with the United States legislation, and that of the state of Texas in particular, as well as the Panamanian legislation regarding adoption, and the persons appearing before me have, in my opinion, sufficient legal capacity in accordance with the United States, Panamanian and Spanish legislation, to execute this present certificate of adoption, to which end,

They declare:

That the Court of First Instance of Alcala de Henares, in File No. 287 in 1976, decreed [here next line or lines have been obliterated—Trans] . . . seventy-six, whereby the full adoption applied for jointly by the married coupie, Mr. Luis A. Cantu and Mrs. Iluminada G. Cantu, nee Iluminada Gomez Morales [sic], of the minor Lilia Esther Moreno Gomez, born in Panama, District of Panama, on November 5, 1961, was approved, and entered into the Vital Statistics Registry of the Province of Panama, in volume 226 of births, folio 245, entry number 580, being the daughter of Jose Daniel Moreno and Christina Gomez de Moreno, all of which comes from the certifying testimony of said document, which the persons appearing have presented to me and which I am attaching to this certificate.

And having stated the foregoing, the persons appearing, through the present writ, DO AGREE:

First: That Mr. Luis A. Cantu and his wife, Mrs. Iluminada G. Cantu, nee Iluminada Gomez Gonzales [sic] are fully and jointly adopting the above-mentioned minor Lilia Esther Moreno Gomez, under the conditions stated in the present writ and in that which may not be shown in the same, in conformity with the applicable precepts of the Spanish and United States legislation.

Second: That both spouses will confer on said adopted minor the hereditary rights corresponding to legitimate offspring.

Third: That likewise they confer on the above-mentioned minor the right to use as sole surnames those of the adopting spouses, and consequently the above-mentioned minor for all purposes shall hereafter be named Lilia Esther Cantu.

Fourth: That the minor Lilia Esther Moreno Gomez, also appearing, gives her most absolute approval and consent for the above mentioned full adoption to take effect, by ratifying that which has already been stated before the Judiciary Authority, under the terms and conditions stated in the present writ.

Fifth: That the father of the above-mentioned minor, Jose Daniel Moreno Gonzalez, resident of the Republic of Panama, gave his most absolute consent for the present adoption of his minor daughter Lilia Esther, by the Cantu's through his personal appearance before the Notary of Panama City, Liborio Garcia Arauz, on March 22, 1976, in a public legal instrument issued on Republic of Panama notarial paper, page no. 019538, statement no. 137229, in testimony thereof, signed by said Notary and two witnesses, duly authenticated by the competent authorities of that Republic, likewise authenticated by the Spanish Ministry of Foreign Affairs, which was given to me by the persons appearing, to be attached to the copies of the present writ that are issued.

Thus they say and do agree.

And after this writ was read to the executing parties by me, the Notary, having advised them of their right to do so by themselves, which they did not exercise, they agreed on its contents and signed.

I, the Notary, attest that I know the executing parties, that this original consists of two class 14a sheets, series O. numbers 2.995.765 and following in order; and to all the rest of the contents.

Luis A. Cantu.—Iluminada G. Cantu.—Lilia Esther Moreno.—Signed: Jose Vieitez.—Signed and sealed.

DOCUMENT WHICH IS INSERTED

Don Esteban Sosa Molina, Secretary of the Court of First Instance of Alcala de Henares and its district, does attest:

That in the files no. 287 of 1976, on adoption which will be stated, the following has been prescribed: File// In the city of Alcala de Henares, on July fourteenth nineteen hundred and seventy-six.

The foregoing writ and documents,

Whereas: Luis A. Cantum [sic] and his wife, Iluminada G. Cantu, 27 and 37 years old respectively, soldier and housewife, of United States nationality and domiciled in Torrejon de Ardoz, initiated proceedings for the adoption of the minor, Lilia Esther Moreno Gomez, 14 years old, daughter of Jose Daniel Moreno and Cristina Gomez Gonzalez de Moreno, who was born in Panama on November 5, 1961, the adoption of whom the minor's father gave his consent before Notary Liborio Garcia Arauz of Panama, as is attested to by the duly authenticated document which they attach, and likewise certificates of the births and marriage of the petitioners and that of the birth of the above-mentioned minor and to the effect that the minor has lived with the petitioners for several years and offering in addition the opportune verifying information.

Whereas: That after the timely proceedings were initiated, the petitioners for the adoption appeared before the legal authorities and the minor likewise appeared and gave her most absolute agreement and consent for the adoption by the petitioners in the terms that are found in said writ, the testifying information having been received from the Attorney General's Office through subpoena, three witnesses having made depositions, without exception of whose acquaintance the authorizing secretary attests, who stated that the advantageousness for the minor of the planned adoption by the petitioners was clear to them, and the proceedings having been sent to the Attorney General's Office for a decision, they express it to the effect that since the advantageousness of the adoption for the minor is duly justified, they are proceeding to approve it.

Whereas: Since the conditions which the legislation of the State of Texas requires for adoption are found in the petitioners (as is clear from the certificate of the American Military Court which was brought to the proceedings) applicable to the adopters by imperative of the provisions of Art. 9, fifth section of the Civil Code, since the adopting father is a native of said state in the U.S.A., and having complied with the formalities which the Spanish legislation requires for adoption, it proceeds to approve the requested adoption, which will have the effects which the law of the State of Texas provides for, without distinction between full and less full adoption, according to the provisions of the ninth article of the Civil Code.

His Honor said before me the Secretary: The adoption of the minor Lilia Esther Moreno Gomez by the married couple Luis A. Cantu and Iluminada G. Cantu is approved, with the full effects that are established in the legislation of the State of Texas.

Issue them testimony of this resolution so, by appearing before a notary, they may effect the execution of the corresponding public certificate of adoption in which will be noted the change of name of the adoptee; and then it will have to be entered into the Vital Statistics Register.

Jose Antonio Maranon Chavarri, Judge of the First Instance of this city and its district, decides and signs this, in witness thereof.—Jose Antonio Maranon Chavarri,—before me.—E. Sosa.—Flourish.—

It agrees with its original to which I refer that is final and so that it is on record thus implementing the commission, I issue and sign the present document in the city of Alcala de Henares, on July sixteenth, nineteen hundred and seventy-six.

Illegible signature.—It is the seal of the Court of First Instance of Alcala de Henares.

[line missing—Trans.] . . . three class 14a sheets, series O., numbers 2.995.976 and two following ones in order; which I sign, seal and deliver in Torrejos de Ardoz, on the same day of its execution.

/S/ José Viéitez.

Translated by Wesley Kerney, CRS—Language Services 6/9/80—amc.

NOTARIA DE

José M.ª Viéitez Lorenzo

TELEF. 675 12 17

TORREJÓN DE ARDOZ

COPIA DE LA ESCRITURA DE ——— ADOPCION ———

Otorgada por:

MR. LUIS A. CANTU y MRS.

ILUMINADA G. CANTU .-

Año 1.976 N.º 2.062

JOSE Mª VIEITEZ LORENZO
NOTARIO - ABOGADO
ALLENDESALAZAR, 29
TORREJON DE ARDOZ

02995976

14ª CLASE

==ADOPCION==

NUMERO DOS MIL SESENTA Y DOS

EN TORREJON DE ARDOZ, mi residencia, a veintisiete de Julio de mil novecientos setenta y seis.

Ante mí, JOSE-MARIA VIEITEZ LORENZO, Notario del Ilustre Colegio de Madrid,

==COMPARECEN==

MR. LUIS A. CANTU, mayor de edad, casado, de nacionalidad norteamericana, nacido en el Estado de Texas (Estados Unidos), Suboficial de la Fuerza Aérea de los Estados Unidos, con destino en la Base Aérea de Torrejón de Ardoz (Madrid), Escuadrón nº 1.989, y provisto de Documento de Identidad número 1.362, expedido el día 7 de Septiembre de 1.973, por la Dirección General de Seguridad, especial para miembros de la misión norteamericana con destino en España.

MRS. ILUMINADA G. CANTU, de soltera ILUMINADA GOMEZ GONZALEZ, mayor de edad, casada con el anterior, sus labores y con el mismo domicilio que aquél. de na

Panamá, número 4-65-137, expedido el día 19 de Enero— de 1.971, y con visado Norteamericano número A-31158313.

Y DOÑA LILIA ESTHER MORENO GOMEZ, de catorce años de edad, de nacionalidad panameña, estudiante, con el mismo domicilio que los anteriores, y provista de Pasaporte de la República de Panamá, número B-068448, expedido el día 4 de Agosto de 1.975. ——————————

El matrimonio compareciente lo hace en su propio nombre y derecho, y ambos esposos consintiendo y completándose mutuamente su capacidad para este acto; y la menor Señorita Moreno Gómez, comparece en cumplimiento de lo-preceptuado en el artículo 1.831 párrafo 2º de la Ley-de Enjuiciamiento Civil. ——————————

Conozco, en la medida de lo necesario, la legislación norteamericana, y la del Estado de Texas en particular, así como la legislación panameña concernientes - a la adopción, y tienen, a mi juicio, los señores comparecientes la capacidad legal suficiente de acuerdo con las legislaciones norteamericana, panameña y española,- para formalizar la presente escritura de adopción, a cuyo efecto, ——————————

= EXPONEN =

Que el Juzgado de Primera Instancia de Alcalá de Henares en el Expediente número 287 de 1.976, dictó Auto-seis, por el que aprobaba la adopción plena, solicitada conjuntamente por los esposos Mr. Luis A. Cantú y Mrs. Iluminada G. Cantú, de soltera, Dª. Iluminada Gómez Morales, de la menor Lilia Esther Moreno Gómez, — nacida en Panamá, distrito de Panamá, el día 5 de Noviembre de 1.961, e inscrita en el Registro Civil de la Provincia de Panamá, al tomo 226 de nacimientos, folio 245, partida número 580, siendo hija de Don José Daniel Moreno y de Doña Cristina Gómez de Moreno, todo lo cual resulta del testimonio fehaciente de dicho Auto, que me presentan los señores comparecientes y que uno a esta escritura. ——————————

Y expuesto cuanto antecede, los señores comparecientes, por la presente escritura, ——————

== OTORGAN ==

PRIMERO: Que Mr. Luis A. Cantú y su esposa Mrs. — Iluminada G. Cantú, de soltera Dª. Iluminada Gómez Gonzales, adoptan conjuntamente y en forma plena a la mencionada menor Doña Lilia Esther Moreno Gómez, en las condiciones que se expresan en la presente escritura, y en lo que no conste en la misma, de conformidad con los preceptos aplicables de las legislaciones española y norteaméricana. ——————————

SEGUNDO: Que ambos esposos confieren a dicha menor adoptada los derechos hereditarios correspondientes a-los hijos legítimos.

TERCERO: Que así mismo confieren a la expresada menor el derecho de usar como únicos apellidos los de los esposos adoptantes, y en su consecuencia la referidamenor se llamará en adelante y a todos los efectos LILIA ESTHER CANTU.

CUARTO: Que la menor también compareciente, Señorita Lilia Esther Moreno Gómez, presta su más absoluta conformidad y consentimiento para que se lleve a efecto la referida adopción plena, ratificando el ya prestado ante la Autoridad Judicial, en los términos y condiciones expresados en la presente escritura.

QUINTO: Que el padre de la referida menor, DON JOSE DANIEL MORENO GONZALEZ, residente en la República de Panamá, prestó su más absoluto consentimiento a la presente adopción de su hija menor Lilia Esther, por parte de los Señores Cantú, mediante comparecencia personal ante el Notario de la Ciudad de Panamá Don Liborio García Arauz, el día 22 de Marzo de 1.976, en escritura pública extendida en Papel Notarial de la República de Panamá, hoja número 019538, liquidación nº 137229, testimonio de la cual, signado por dicho Notario y dos testigos, debidamente legalizado por las Autoridades competentes de aquélla República, legalizado igualmente por-

NOTARIO-ABOGADO
ALLENDE SALAZAR, 29
TORREJON DE ARDOZ

02995977

14ª CLASE

Ministerio de Asuntos Exteriores español, se me entrega por los señores comparecientes, para unir a las copias que de la presente escritura se expidan.

Así lo dicen y otorgan. ——————————

Y leida por mí, el Notario, esta escritura a los otorgantes, advertidos de su derecho para hacerlo por sí, de que no hicierón uso, se ratifican en su contenido y firman. ——————————

De conocer a los otorgantes, de que este original consta de dos pliegos de clase 14ª, serie O. números 2.995.765 y siguiente en orden; y de todo lo demás en él contenido, yo el Notario, DOY FE.————

Luis A. Cantu.- Iluminada G. Cantu.- Lilia Ester Moreno.- Signado: JOSE VIEITEZ.- Rubricados y sellado.——————————

============ DOCUMENTO QUE SE INSERTA ============

DON ESTEBAN SOSA MOLINA, SECRETARIO DEL JUZGADO DE PRIMERA INSTANCIA DE ALCALA DE HENARES Y SU PARTIDO.——————————

DOY FE: Que en los autos nº 287 de 1.976, sobre adopción que se expresará se ha dictado la siguiente:————————————————————————————

AUTO // En la Ciudad de Alcalá de Henares, a catorce de Julio de mil novecientos setenta y seis.—

El anterior escrito y documentos, al expediente de su razón, ————————————————————

RESULTANDO: Que Don Luis A. Cantúm y sú esposa - Doña Iluminada G. Cantú, de 27 y 37 años de edad respectivamente, militar y de ocupación su casa, de nacionalidad norteamericana y domiciliados en Torrejón de Ardoz, promovierón expediente para llevar a efecto la adopción de la menor Lilia Esther Moreno Gómez,- de 14 años de edad, hija de Don José Daniel Moreno- y de Doña Cristina Gómez González de Moreno, nacida en Panamá el 5 de Noviembre de 1.961, a cuya adopción prestó su consentimiento el padre de la menor ante- el Notario de Panamá Don Liborio Garcia Arauz, según acredita por el documento que acompañan debidamente legalizado presentando igualmente certificaciones - de los nacimientos y del matrimonio de los solicitantes y del nacimiento de la referida menor y haciendo constar que la menor vive con los solicitantes - desde hace varios años y ofreciendo además la oportuna información testifical.————————————

RESULTANDO: Que iniciado el oportuno expediente- comparecieron ante la presencia judicial los solici a la adopción e igualmente compareció la menor prestando su mas absoluta conformidad y consentimiento para la adopción por los solicitantes en los términos que constan en dicho escrito, recibiendose con citación del Ministerio Fiscal la información testifical ofrecida habiendo depuesto tres testigos sin excepción de cuyo conocimiento da fé el Secretario-autorizante los cuales afirmaron constarles la conveniencia para la menor de la adopción proyectada - por los solicitantes y pasando el expediente al Ministerio Fiscal para dictamen lo emite en sentido de que estando debidamente justificada la conveniencia de la adopción para la menor, procede aprobarla.——

CONSIDERANDO: Que, concurriendo en los solicitantes las condiciones que para adoptar exige la legislación del Estado de Tejas (según se desprende de - la certificación del Juzgado Militar Americano traída al expediente) aplicable a los adoptantes por imperativo de lo dispuesto por el art. 9 apartado —— quinto del Codigo Civil,dado que el padre adoptante es natural de dicho Estado de U.S.A., y habiendo — se cumplido las formalidades que para adoptar exige la Legislación Española, procede aprobar la adopción pedida, que tendrá los efectos que previene el Derecho del Estado de Tejas, sin distinción entre adopción plena y menos plena, según lo prevenido en el-art. noveno del Codigo Civil.——————————

S.S. por ante mí el Secretario DIJO: Se —— aprueba la adopción de la menor Lilia Esther Moreno Gómez por los conyuges Don Luis A. Cantú y Doña Iluminada G. Cant'u, con los plenos efectos que se establecen en la Legislacíon del Estado de Tejas.——

Expidaseles testimonio de esta resolución para — que, compareciendo ante Notario, lleven a efecto el otorgamiento de la correspondiente escritura pública de adopción en la que se hara constar el cambio de nombre de la adoptando; debiendo luego inscribirse en el Registro Civil.——————————

Lo provee y firma el Señor Don José Antonio Marañón Chavarrí, Juez de Primera Instancia de esta Ciudad y su Partido, doy fé.- José Antonio Marañón Chavarrí,- Ante mí.- E. Sosa.- Rubricado.——————

Concuerda con su original a que me refiero que — es Firme y para que conste cumpliendo lo mandado expido y firmo el presente en la Ciudad de Alcalá de Henares, a dieciseis de Julio de mil novecientos setenta y seis.——————————

Firma ilegible.- Esta el sello del Juzgado de Primera Instancia de Alcalá de Henares.——————

ALLENDESALAZAR, Mª
TORREJON DE ARDOZ

14ª CLASE

02995978

tres pliegos de clase 14ª, serie O., números 2.995.976 y dos siguientes en orden; que signo, firmo, rubrico y sello en Torrejón de Ardoz, el mismo día de su otorgamiento.

Notaria de D. José Mª Vieta Lorenzo - Torrejón de Ardoz

José Vieta

Mr. Price also submitted the following explanation concerning the beneficiary's residence:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 6, 1980.

Hon. ELIZABETH HOLTZMAN,
Chairwoman, Subcommittee on Immigration, Refugees, and International Law, 2137 Rayburn House Office Building, Washington, D.C.

DEAR MADAME CHAIRMAN: This is in response to your recent request for additional documents and information regarding my private relief bill, H.R. 5157.

I am enclosing a copy of the Spanish adoption decree, as requested. You also asked about the reason that Miss Cantu is living apart from the adoptive parents. I spoke to Mr. Cantu and was advised that he has only recently moved from Corpus Christi to Garland, Texas, and he felt it would be better for Miss Cantu to finish high school at the same school she had been attending. Since Mr. Cantu's mother lives in Corpus Christi, the adoptive daughter is staying there until school is out for the summer.

I am currently working on having a home-study done on the Cantu family, but it is quite difficult to locate an agency there that can do the job. Please be sure that I will furnish you with a copy of the home-study as soon as it has been completed.

Kindest regards.

Sincerely,

MELVIN PRICE,
Member of Congress.

Enclosure.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 5157, amended, should be enacted and accordingly recommends that the bill do pass.

○

96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96-1295

JARAMPORN SERMSRI AND AKHARATA SERMSRI

September 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

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Ms. Holtzman, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5379]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5379) for the relief of Jaramporn Sermsri and Akharata Sermsri, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On line 7, deleted the words "Jack Costner, a citizen of the United States, and his spouse, Chantira Costner" and insert in lieu thereof the words "Mr. and Mrs. Jack Costner, a citizen of the United States, and a lawful resident alien, respectively"

PURPOSE OF THE BILL

The purpose of this bill, as amended, is to facilitate the admission into the United States of the adopted children of a United States citizen and a lawful permanent resident alien. The bill is amended to reflect the immigration status of the adoptive parents.

GENERAL INFORMATION

Beneficiaries of this bill are 10-year-old and 9-year-old natives of Thailand. They have personally met their adoptive parents, and the adoptive mother is their aunt. Adoption was completed in Thailand March 22 and 23, 1977. A favorable home-study has been submitted.

The pertinent facts in this case are contained in letters dated January 10, 1980 and March 3, 1980 from the Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. Those letters and accompanying memorandum read as follows:

U.S. **Department of Justice,**
Immigration and Naturalization Service,
Washington, D.C., January 10, 1980.

A22 235 879
A22 235 880

Hon. **Peter** W. **Rodino**, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: In response to your request for a report relative to the bill (H.R. 5379) for the relief of Jaramporn and Akharta Sermri, there is attached a memorandum of information concerning the beneficiaries.

The bill provides that the beneficiaries, who have been adopted by a United States citizen and his spouse, may be classified as children and granted immediate relative status on approval of the petition to be filed by their adoptive parents. It further provides that no natural parent or sibling of the beneficiaries shall derive any benefits by virtue of such relationship.

Absent enactment of the bill, the beneficiaries, natives and citizens of Thailand, would be chargeable to the nonpreference portion of the numerical limitation for immigrants and conditional entrants.

Sincerely,

Cornelius J. Leary,
Executive Assistant
(For the Commissioner).

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE H.R. 5379

Information concerning this case was obtained from Mr. and Mrs. Costner, who are the adoptive parents and interested parties.

The beneficiaries Akharta Sermsri and Jaramporn Sermsri, were born in Thailand on November 5, 1979 and November 11, 1970 respectively. They are presently residing with their natural parents in Thailand. Both beneficiaries were adopted on April 22, 1977 in the Phra Nakthon District, Bangkok, Thailand with the consent of their natural parents.

Mr. Jack Costner was born on July 6, 1945 in Philadelphia, Pennsylvania. His wife Chantipa Costner, who is a native and citizen of Thailand, was born on May 27, 1948 and is a lawful permanent resident of the United States. They were married in 1972 in Bangkok, Thailand and have no children.

Mr. Jack Costner is a Supervisor, Technical Service Division, Sperry Univac Corporation, Dahlgren, Virginia. He claims an annual salary of approximately $25,000 per year. Mrs. Costner is a housewife. They report assets of approximately $75,000 consisting of real and personal property.

The interested parties report that they are unable to have children of their own. They feel that they can offer the beneficiaries a better life due to the socioeconomic benefits available in the United States.

U.S. Department of Justice,
Immigration and Naturalization Service,
Washington, D.C., March 3, 1980.

A22 235 879
A22 235 880

Hon. **Peter W. Rodino, Jr.,**
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: This refers to H.R. 5379 in behalf of Jaramporn and Akharta Sermsri and your request for additional information dated January 31, 1980.

The home-study requirement has not yet been met and, as the home-study is not completed by this Service, the adoptive parents must request the initiation of the study by local authorities. The beneficiary Jaramporn Sermsri, a male, was born in Thailand on November 11, 1970. His sister, Akharta Sermsri, was born in Thailand on November 5, 1969. The adoptive mother, Chantipa Costner, states that her relationship to the natural mother is that of friendship only.

Sincerely,

Cornelius J. Leary,
Executive Assistant
(For the Commissioner.)

On December 7, 1979, the Department of State submitted a report on this bill which reads as follows:

Department of State,
Washington, D.C., December 7, 1979.

Hon. **Peter W. Rodino, Jr.,**
Chairman, Committee on the Judiciary,
House of Representatives.

Dear Mr. Chairman: In reference to your request for a report concerning the case of Jaramporn Sermsri and Akharata Sermsri, beneficiaries of H.R. 5379, 96th Congress, there is enclosed a memorandum of information concerning the beneficiaries. This memorandum has been submitted by the United States Embassy at Bangkok, Thailand, in whose consular jurisdiction the beneficiaries reside.

The bill would provide for the beneficiaries' classification as children and for granting of immediate relative status upon approval of a petition filed by Jack Costner, a citizen of the United States, and his spouse, Chantira Costner. It also provides that the natural parents or brothers or sisters of the beneficiaries shall not by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

Sincerely,

J. Brian Atwood,
Assistant Secretary
for Congressional Relations.

Enclosure: Memorandum of Information.

Submitted by the American Embassy at Bangkok, Thailand

MEMORANDUM OF INFORMATION CONCERNING H.R. 5379 FOR THE RELIEF OF JARAMPORN SERMSRI AND AKHARATA SERMSRI

The beneficiaries, Jaramporn Sermsri and Akharata Sermsri were born on November 12, 1970 and November 5, 1969, respectively, at Bangkok, Thailand and are currently residing with their natural parents.

Jaramporn was adopted on March 23 and Akharata on March 22, 1977 in Bangkok, by Mr. Costner and Mrs. Costner, who is the sister of the adoptive children's natural mother. The beneficiaries are grammar school students and have personally met their adoptive parents.

The beneficiaries are chargeable to the foreign state limitation for Thailand.

The Embassy's investigation has revealed no information which would render the beneficiaries ineligible to receive visas, and medical examinations found the beneficiaries to be in good health.

Enclosure: Adoption decree.

KOR.ROR. 5

A.C. SERVICE LIMITED PARTNERSHIP

REGISTRATION OF ADOPTION

REGISTRATION OFFICE OF Phra Nakhon District PROVINCE OF Bangkok

DESCRIPTION	ADOPTOR	ADOPTED - CHILD
1. NAME	Mr. Jack Frazier Costner	Mister Akharata Sermsri
2. RACE/NATIONALITY	American - American	Thai - Thai
3. DOMICILE	2133 Shetland Drive, Warrington, Pennsylvania 18976 U.S.A.	201-3 , Tanao Road, Tambon Wat Bovornnivet, Phra Nakhon
4. AGE DATE OF BIRTH	32 years July 6, 1945	8 years November 5, 1969
5. PLACE OF BIRTH	New Jersy State U.S.A.	Dusit District Bangkok Metropolis
6. NAME OF SPOUSE	Mrs. Chantira Costner	Minor
7. PARENTS' NAME OR LAWFUL REP. OF ADOPTED CHILD	1. Mr. Sanhoh Sermsri 2. Mrs. Siriwan Sermsri	
8. PARENTS' DOMICILE OR LAWFUL REP. OF ADOPTED CHILD	201-3 Tanao Road, Tambon: Wat Bovornnivet, District of Phra Nakhon, Bangkok Metropolis.	
9. APPLICANTS' SIGNATURE	Jack Frazier Costner	Sanhoh Sermsri Siriwan Sermsri
10. WITNESSES' SIGNATURE	1. Illegible 2. Illegible	
11. REGISTRATION	REGISTRATION NO. 14/2633 DATE March 22, 1977 REGISTRAR'S SIGNATURE Illegible	

Kingdom of Thailand
Bangkok Metropolitan City
Embassy of the United States
of America

I, the undersigned consular officer of the United States of America, duly commissioned and qualified, do hereby certify that the foregoing is a true and faithful copy of the original document this day exhibited to me, the same having been carefully examined by me and compared with the said original document and found to agree therewith word for word and figure for figure.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the American Embassy, Consular Section at Bangkok, Thailand, this 15th day of [illegible], 1979.

Vice Consul of the United States of America

MEMORANDUM

First time Date: March 22, 1977

The registration of adoption of this case, the adopter of Mr. Jack Frazier Costner, has his spouse, namely: Mrs. Chantira Costner agreed to consent for this adoption.

The adopted child is Master Akharata Sermsri, a child of Mr. Sanhoh Sermsri and Mrs. Siriwan Sermsri according to the Birth Certificate No.V.7926/12, issued at Registration Office of Kwaeng Dusit, dated November 6, 1969. The father and mother came to give their consents personally. So it is hereby registered.

The adopter is a person of American Nationality, holds the Passport No. H. 200210 issued at State of Pennsylvania, U.S.A. He requested Mrs.Chantira Costner to be his interpreter. The interpreter read and translation the above mentioned statement to the applicant and he certify that it is true and correct.

In witness whereof, they have affixed their signatures hereunder in the presence of the witnesses.

(Signature)	Jack Frazier Coster	Adopter
"	Chantira Coster	Adopter's wife who gives consent
"	Sanhoh Sermsri	Father of adopted-child
"	Siriwan Sermsri	Mother of adopted-child
"	Illegible	Witness
"	Illegible	Witness
"	Illegible	Registrar

Certified true copy

(Signed) Sangob Ruengdej

Acting for District Officer of Phra Nakhon District

March 22, 1977

(Official Seal affixed)

CERTIFIED CORRECT TRANSLATION

Oraphan Supsorn

คร. ๑๔

ทะเบียนการรับบุตรบุญธรรม

รายการ	ผู้รับบุตรบุญธรรม	บุตรบุญธรรม
๑. นาม	นาย แจ๊ก ฟาร์ซิเตอร์ คลัสเตอร์	ด.ช. ดรงค์รัฐ เสริมพงษ์
๒. เชื้อชาติ สัญชาติ	อเมริกัน อเมริกัน	ไทย – ไทย
๓. ถิ่นที่อยู่	๖/ ถนน เชิกเรลม ลอร์วกัน เพนซิลวาเนีย	๒๐๑–๓ ถ.พ.หลว ต. วัดมงกุฎ
๔. อายุ เกิด วัน, เดือน, ปี	๓๔ ปี ๖ ก.ค. ๒๔๘๖	๔ ปี ๕ พ.ย. ๒๕๑๖
๕. ที่เกิด	พิตเตอร์ สหรัฐอเมริกา	ราชบุรี กรุงเทพฯ
๖. นามคู่สมรส	นางเจ็นนิเฟอร์ คลัสเตอร์	–
๗. นามบิดามารดาหรือผู้แทนโดยชอบธรรมของบุตรบุญธรรม	นายเลหะ เสริมพงษ์ นาง [illegible]	
๘. ถิ่นที่อยู่ของบิดามารดาหรือผู้แทนโดยชอบธรรมของบุตรบุญธรรม	๒๐๑–๓ ถ.พ. [illegible] เขตพระนคร กรุงเทพฯ	
๙. ลายมือชื่อผู้ร้องขอจดทะเบียน	Jack [illegible]	[illegible]
๑๐. ลายมือชื่อพยาน	๑. [illegible] ๒. [illegible]	

๑๑. จดทะเบียน	เลขทะเบียนที่	๑๔/๒๕๒๐
	วัน, เดือน, ปี	22 ส.ค. 2520
	ลายมือชื่อ–นายทะเบียน	

Kingdom of Thailand
Bangkok Metropolitan City
Embassy of the United States of America } ss.

I, the undersigned consular officer of the United States of America, duly commissioned and qualified, do hereby certify that the foregoing is a true and faithful copy of the original/copy this day exhibited to me, the same having been carefully examined by me and compared with the said original/copy and found to agree therewith word for word and figure for figure.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the American Embassy, Consular Section at Bangkok, Thailand, this [illegible] Nov. 1977

Vice Consul of the United States of America

คร. ๑๙

บันทึก

ครั้งที่ ๑ วันที่ 22 ธ.ค. 2520 พ.ศ.

ในการสอบถามพยานบุคคลธรรมดานี้คือ นายแจ็ค ฟาร์เรล คอลเมอร์ มีภริยาชื่อ นางจันทิรา คอลเมอร์ ได้ถามให้ความแปล [illegible] ต่อๆ.

ผู้ที่จะเป็นบุตรบุญธรรมคือ ด.ญ. จรรครัฐ เสริมศรี เป็นบุตรของนายเสนาะ เสริมศรี กับนางศิริวรรณ เสริมศรี ตามสูติบัตรเลขที่ ก. ๗๙๖๕/๑๒ ออกณ. สำนักทะเบียนท้องถิ่นเขตดุสิต ลงวันที่ ๕ พฤศจิกายน ๒๕๑๒ ทั้งบิดาและมารดา ได้มาให้ความยินยอม [illegible]

ผู้รับบุตรบุญธรรม [illegible] อเมริกัน ถือหนังสือเดินทางเลขที่ H ๒๐๐๒๑๐ ออก ณ. [illegible] พูด และ ฟังภาษาไทยไม่ได้ นางจันทิรา คอลเมอร์ [illegible] อ่าน แปล [illegible]

ลงชื่อ Jack [illegible] ผู้ขอรับบุตรบุญธรรม
(ลายมือชื่อ นาย แจ็ค ฟาร์เรลร์ คอลเมอร์)

" จันทิรา คอลเมอร์ ภริยาให้ความยินยอม

" เสนาะ เสริมศรี บิดาบุตรที่จะเป็นบุตรบุญธรรม

" ศิริวรรณ เสริมศรี. มารดาบุตรที่จะเป็นบุตรบุญธรรม

" พยาน

" พยาน

" นายทะเบียน

หัวหน้าสำนักงานเขต [illegible]

สำเนาถูกต้อง

22 ธ.ค. 2520

A.C.

REGISTRATION OF ADOPTION

FICE OF Phra Nakhon District PROVINCE OF Bangkok Metropolis

RIPTION	ADOPTOR	ADOPTED - CHILD
1. NAME	Mr. Jack Frazier Costner	Miss Jarampora Sermsri
2. RACE/NATIONALITY	American - American	Thai - Thai
3. DOMICILE	2133 Shetland Drive Warrington, Pennsylvania 18976, U.S.A.	201-3, Tanao Road, Tambon Wat Bovornnivet, District of Phra Nakhon, Bangkok
4. AGE DATE OF BIRTH	32 years July 6, 1945	7 years November 12, 1970
5. PLACE OF BIRTH	New Jersey State. U.S.A.	Dusit District Bangkok Metropolis
6. NAME OF SPOUSE	Mrs.Chantira Costner	Minor
7. PARENTS' NAME OR LAWFUL REP. OF ADOPTED CHILD	Mr. Sanhoh Sermsri Mrs. Siriwan Sermsri	
8. PARENTS' DOMICILE OR LAWFUL REP. OF ADOPTED CHILD	201-3, Tanao Road, Tambon: Wat Bovornnives, District of Phra Nakhon, Bangkok Metropolis	
9. APPLICANTS' SIGNATURE	Jack Frazier Costner	Sanhoh Sermsri Siriwan Sermsri
10. WITNESSES' SIGNATURE	1. Illegible 2. Illegible	
11. REGISTRATION	REGISTRATION NO. 15/2534 DATE March 23, 1977 REGISTRAR'S SIGNATURE Illegible	

MEMORANDUM

Part time Date: March 23, 1977

The registration of Adoption of this case, the adopter of Mr. Jack Frazier Costner, has his spouse, namely: Mrs. Chantira Costner agreed to consent for this adoption.

The Adopted child is Miss Jaramporn Sermsri, a child of Mr. Sanhoh Sermsri and Mrs. Siriwan Sermsri according to the Birth Certificate No. V.8016/13, issued at Registration Office of Kwaeng Dusit, dated November 13, 1970. The father and mother came to give their consents personally.

The adopter is a person of American Nationality, holds the Passport No. L. 200210 issued at State of Pennsylvania, U.S.A. He requested Mrs. Chantira Costner to be his interpreter. The interpreter read and translation the above-mentioned statement to the applicant and he certify that it is true and correct.

In witness whereof, they have affixed their signatures hereunder in the presence of the witnesses.

(Signature)	Jack Frazier Coster	Adopter
"	Chantira Costner	Adopter's wife who gives consent.
"	Sanhoh Sermsri	Father of adopted-child
"	Siriwan Sermsri	Mother of adopted-child
"	Illegible	Witness
"	Illegible	Witness
"	Illegible	Registrar

Certified true copy

(Signed) Sangob Ruengdej

Acting for District Officer of Phra Nakhon District

March 22, 1977

(Official Seal affixed)

of Thailand
-Thonburi
ropolitan City
y of the United States
America)

Mr. Robinson, the author of this bill, submitted the following statement in support of his bill:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 10, 1980.

Hon. ELIZABETH HOLTZMAN,
Chairwoman, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR LIZ: Thank you for your kind letter of May 27, 1980, in regard to my bill, H.R. 5379, for the relief of Jaramporn Sermsri and Akharata Sermsri.

I am glad to state for the record of the Subcommittee on this bill that I feel strongly that H.R. 5379 is in the interest of equity and, indeed, represents the only avenue to equity for a citizen of the United States, and his wife, who adopted in good faith two Thai children and, in undertaking to formalize the adoption, expended their best effort to comply with all provisions of law made know to them by officers of the United States.

The Subcommittee has been provided with specifics in this regard, reflecting that all administrative remedies have been exhausted, and establishing that the adopting parents are regarded as responsible persons in their community, with means to provide adequately for the support and well-being of the proposed beneficiaries of this bill.

My record of sponsorship of private legislation is minimal, and I was impelled to introduce H.R. 5379 only after carefull inquiry into the circumstances, which satisfied me of the merit of the plea for relief.

Sincerely,

J. KENNETH ROBINSON.

On April 25, 1980, Mr. Jack Costner, the adoptive father of the beneficiary of this bill submitted the following letter:

APRIL 25, 1980.

Hon. J. KENNETH ROBINSON,
Suite 305, 904 Princess Anne Street,
Fredericksburg, Va.

DEAR SIR: I am in receipt of a memo concerning relief bill H.R. 5379 which identifies a possible conflict in statements made during our interview with an officer of the Immigration and Naturalization Service.

During our interview, my wife and I related the complete story of the children's adoption and attempts to acquire immigrant visas. I apologize if it was not clear as to the relationship between the children and my wife. The children's natural mother is my wife's sister.

I trust this resolves the conflict in question. Should further information be required, we will promptly respond.

Sincerely yours,

JACK F. COSTNER,
3 Laurel Court, Fredericksburg, Va.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 5379, amended, should be enacted and accordingly recommends that the bill do pass.

○

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1296

MICHAEL CHINWEN KE

SEPTEMBER 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

Ms. HOLTZMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5745]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5745), for the relief of Michael Chinwen Ke, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to facilitate the admission into the United States of the prospective adopted child of United States citizens.

GENERAL INFORMATION

The beneficiary of this bill is a 4-year-old native and citizen of Taiwan who was adopted by proxy in Taiwan one year after birth. Adoptive parents have no natural children, but have one adoptive daughter. Support has been provided the beneficiary by the adoptive parents. A favorable home study has been submitted, and the preadoption requiurements of the state have been met.

The pertinent facts in this case are contained in letters dated February 29, 1980 and May 20, 1980 from the Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. Those letters and accompanying memorandum read as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., February 29, 1980.

WAS 50/31-C
A22216809
Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 5745) for the relief of Michael Chinwen Ke, there is attached a memorandum of information concerning the beneficiary.

The bill provides that the beneficiary, who has been adopted by a United States citizen and his spouse, may be classified as a child and granted immediate relative status upon approval of a petition to be filed by his adoptive parents. It further provides that no natural parent or sibling of the beneficiary shall derive any benefits by virtue of such relationship.

The beneficiary, a native and citizen of the Republic of China, is chargeable to the nonpreference portion of the numerical limitation for immigrants and conditional entrants.

Sincerely,

CORNELIUS J. LEARY,
Commissioner.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES IN RE H.R. 5745

Information in this case was obtained from Mr. and Mrs. Charles Ke who are the adoptive parents and interested parties.

The beneficiary, Michael Chinwen Ke, was born in Taipei, Taiwan on October 4, 1976. He is presently residing in Taiwan with the brother of Mr. Charles Ke. The beneficiary was adopted by proxy in the Taipei District Court, Taipei, Taiwan with the consent of the natural parents. The beneficiary has six siblings all of whom were born and reside in Taiwan. Their present whereabouts are unknown.

Mr. Charles Ke was born on August 13, 1935 in Hsinchin, Taiwan and is a naturalized citizen of the United States. His wife, Jean Ke, was born on February 1, 1938 in Hualien, Taiwan. She is a naturalized United States citizen. They were married on August 25, 1966 in Hsinchin, Taiwan.

Mr. Charles Ke is a chemist with the Department of Transportation, Washington, D.C. He reports an annual salary of $30,500. Mrs. Ke is a housewife. They report assets of $216,000 in real and personal property with debts in the amount of $9,000.

Mr. and Mrs. Charles Ke report that they are unable to have children of their own. They have one adopted daughter. They desire to give the beneficiary a better life in the United States. Visa petitions to classify the beneficiary as an orphan were denied at Pittsburgh, Pennsylvania on June 10, 1977 and at Washington, D.C. on November 13, 1979 because the beneficiary failed to meet the definition of "eligible orphan" in that he was not abandoned or deserted but was surrendered by his natural parents. At the time custody was granted to the interested party's mother, the beneficiary's natural mother also gave monies for his well-being. Nonpreference visa numbers are currently unavailable.

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., May 20, 1980.

A22216809

Hon PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This refers to H.R. 5745 in behalf of Michael Chinwen Ke and your request for additional information.

The interested parties, Mr. and Mrs. Charles Ke, adopted Sandra Ke in Taipei, in 1972. Sandra Ke was born May 26, 1971.

Sincerely,

CORNELIUS J. LEARY,
Executive Assistant.

On January 30, 1980 the Department of State submitted a report on this bill which reads as follows:

DEPARTMENT OF STATE,
Washington, D.C. January 30, 1980.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Michael Chinwen Ke, beneficiary of H.R. 5745, 96th Congress, there is enclosed a memorandum of information concerning the beneficiary. This memorandum has been submitted by the American Institute of Taipei, Taiwan, in whose consular jurisdiction the beneficiary resides.

The bill would provide for the beneficiary's classification as a child and for granting of immediate relative status upon approval of a petition filed by Charles H. and Jean C. Ke, citizens of the United States. It also provides that the natural parents or brothers or sisters of the beneficiary shall not by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary
for Congressional Relations.

Enclosure: Memorandum of Information.

DECEMBER 31, 1979.

SUBMITTED BY THE AMERICAN INSTITUTE IN TAIWAN, TAIPEI OFFICE

MEMORANDUM OF INFORMATION CONCERNING H.R. 5745 FOR THE RELIEF OF MICHAEL CHINWEN KE

The beneficiary, Michael Chinwen Ke, also known as Chen Chin-Wen, was born on October 4, 1976, at Taipei, Taiwan, the sixth son of Chen Chao-Yuan and Chen Lin-Mang. He was adopted by Charles

H. and Jean C. Ke, through proxy, on February 8, 1977, at Taipei, Taiwan. He currently resides at 42 Hsing Nan Street, Hsinchu, in the home of his grandmother (by adoption).

Charles H. and Jean C. Ke have only a daughter, and had expressed to their relatives in Taiwan their desire to adopt a son. Soon after the beneficiary was born it came to the attention of Mr. Ke's brother in Taiwan that the beneficiary's parents wanted to give him away for adoption. Mr. and Mrs. Ke in the United States were informed, and they authorized Mr. Ke's brother to act as their proxy in effecting the adoption. This is permissible under the laws of Taiwan. Adoption procedures were completed on February 8, 1977, and on March 22, 1977, the beneficiary was registered as an nonpreference intending immigrant on the basis that a labor certification would not be required.

As an immigrant, the beneficiary is chargeable to the numerical limitation for China. Nonpreference visa numbers have not been available for immigrants chargeable to China since June, 1975, and, on the basis of currently available information, it is quite uncertain when nonpreference visa numbers will become available again, because of the large demand for visa numbers by China-born immigrants. Because of this situation, the beneficiary has so far not been able to receive a visa to travel to the United States.

The beneficiary underwent a medical examination on December 19, 1979, and the report reveals no excludable condition.

TAIWAN, CITY OF TAIPEI, AMERICAN INSTITUTE IN TAIWAN,
TAIPEI OFFICE

ss:

Before me, Richard H. Williams, Special Notary (PL 96-8) of the Travel Services Section, American Institute in Taiwan, Taipei Office, duly appointed and qualified, personally appeared Yen I-tung, who, being duly sworn, deposes and says:

1. That his name is Yen I-tung;
2. That he is an employee of the American Institute in Taiwan, Taipei Office;
3. That he is well conversant with the English and Chinese languages;
4. That he prepared the attached English translation of a Chinese notarial certificate;
5. That to the best of his knowledge and belief said English translation is a true and correct version of the original Chinese document, a copy of which is also attached.

And further the deponent saith not.

YEN I-TUNG.

Subscribed and sworn to before me this 10th day of January, 1980.

[SEAL]

RICHARD H. WILLIAMS,
Special Notary (Public Law 96-8) the Travel Services Section, American Institute in Taiwan, Taipei Office.

Certificate of Acknowledgement

No. (66)-Yi-Nien-Tu-Jen-Tze-3561

Applicants

The adopters: KE Chiung-Hui, male, native of Taiwan, born August 13, 1935 occupation blank, identification document blank, address Pittsburgh, Pennsylvania, U.S.A.

CHEN Chu-Tze, female, native of Taiwan, born February 1, 1938, occupation blank, identification document blank, address Pittsburgh, Pennsylvania, U.S.A.

Agent for above: KE Cheng-Hsiung, male, native of Taiwan, born December 21, 1941, occupation government employee, identification card No. J100281559, address 42 Hsing Nan Street, Hsinchu

The adoptee: CHEN Chin-Wen, male, native of Taiwan, born October 4, 1976, occupation blank, identification document blank, address 46 Lane 426, Cheng Kung Road, Section 2, Neihu, Taipei

Statutory agent of above: CHEN Chao-Yuan, male, native of Taiwan, born November 13, 1931, occupation mechanic, identification card No. P102149183, address same as above

CHEN, Lin-Mang, female, native of Taiwan, born October 3, 1932, occupation blank, identification card No. P202111583, address same as above

Witnesses, interpreter, or third party giving approval or consent

Blank.

Matters pertaining to personal rights or private instrument for which acknowledgement is required

The above applicants presented the attached instrument relating to an adoption and requested that acknowledgment be made regarding the affixing of signatures and seals to said instrument.

Certification where third party approval or consent has been obtained

Blank.

Reason for making the acknowledgement and statutory reference

The above applicants have acknowledged to the notary official that the signatures and/or seals on the attached instrument relating to an adoption were affixed by them. They were examined regarding their understanding of the contents of said document. Documents relating to their identity and qualifications have also been verified. A certificate of acknowledgement is therefore issued in accordance with item 3, article 4 of the Law of Public Notarization.

Reason(s) when interpreter, witness, or eyewitness are required to be present

Blank

Date and place of preparation of certificate

This certificate was prepared at the Office of the Public Notary Taipei District Court, Taiwan, this 8th day of February, 1977.

The above certificate was approved by the following persons, who were present in person, as being correct, and they have affixed their signatures below.

Applicants: KE Chiung-Hui, CHEN Chu-Tze, by agent: KE Cheng-Hsiung (seal).

CHEN Chao-Yuan (seal).

CHEN Lin-Mang (seal).

(Seal of the Office of the Public Notary, Taipei District Court).

Office of the Public Notary, Taipei District Court, Taiwan.

(Facsimile signature) TSUI Ching-Yun, Public Notary.

Prepared and delivered to the applicants at the Office of the Public Notary, Taipei District Court, Taiwan, this 8th day of February, 1977.

Public Notary, Office of the Public Notary, Taipei District Court, Taiwan.

INSTRUMENT RELATING TO AN ADOPTION

Parties executing this instrument, CHEN Chao-Yuan and CHEN Lin-Mang, hereinafter referred to as Party A, KE Chiung-Hui and CHEN Chu-Tze, hereinafter referred to as Party B, hereby agree that Party A will give their sixth son, CHEN Chin-Wen, to be adopted by Party B as their son. This instrument is herewith executed as written proof of this agreement.

Party A: CHEN Chao-Yuan (seal), Identification Card No. P102149183. Address: 46 Lane 426, Cheng Kung Road, Section 2, 7th Lin, Hu Hsing Li, Neihu District, Taipei.

CHEN Lin-Mang (seal), Identification Card No. P202111583. Address: 46 Lane 426, Cheng Kung Road, Section 2, 7th Lin, Hu Hsing Li, Neihu District, Taipei.

Party B: KE Chiung-Hui (Charles H. Ke), CHEN Chu-Tze (Jean C. Ke), Address: Pittsburgh, Pennsylvania, U.S.A.

Agent for Party B: KE Cheng-Hsiung (seal), Identification Card No. J100281559. Address: 42 Hsing Nan Street, 2nd Lin, Hsing Nan Li, Hsinchu, Hsinchu Hsien.

Dated February 8, 1977.

已得第三人許可或同意者其證明	空欄
認證之事由及依據法條	後附之收養契據由請求人承認為其簽名或蓋章，經公證人核對所提出證明其身分及資格之證件，並當面行之。並說明並解釋所簽署文件之內容。依公證法第[illegible]條第二款之規定予以認證。
有通譯見證人或證人到場其事由	空欄
作成證書之日期及處所	本證書於中華民國陸拾陸年貳月捌日在臺灣臺北地方法院公證處作成

右證書經左列在場人承諾無誤簽名於後

蓋用公證處圖記

請求人 楊錫輝 楊陳竹云

代理人：楊正雄 楊正雄印

陳超頤

陳林錦

臺灣臺北地方法院公證處

公證人 張慶雲

本

本於中華民國陸拾陸年貳月捌日在臺灣臺北地方法院公證處照原本作成交付與請求人收執

臺灣臺北地方法院公證處公證人

附式㈤

認證書正本

(66) 乙 年度認字第 3561 號

請求人姓名或名稱	性別	籍貫	出生年月日	職業	身份證明文件名稱及其字號	住居所或事務所	備考
收養人 柯炯輝	男	台灣	24.8.13.			美国賓州匹茲堡	
陳竹子	女	〃	23.2.1.			〃	
右代理人 柯正雄	男	〃	30.12.21.	公	J100251559	新竹興南街4号	
被收養人 陳欽文	男	台灣	65.10.4.			台北市內湖區成功路二段426巷46号	
法定代理人 陳趙源	男	〃	20.11.13.	工	P102147183	同右	
陳林莽	女	〃	21.10.3.		P202111583	同右	

證人見證人通譯或已為同意或允許之第三人姓名：空欄

請求認證之私權事實或私證書名稱：右開請求人提出如後附之收養書據一件，請求就文件內之簽名或蓋章，予以認証。

收 養 證 書

立收養證書人甲方陳超源 陳林[illegible] 乙方柯炯輝 陳竹子

茲經双方同意由甲方將其六子陳欽文與乙方共同收養爲養子恐口無憑特立此爲據。

甲方

陳超源 身份證號碼 P102149183
住址：台北市內湖區湖興里七鄰成功路二段四二六巷四六號

陳林[illegible] 身份證號碼 P202111583
住址：台北市內湖區湖興里七鄰成功路二段四二六巷四六號

乙方

柯炯輝 Charles H. Ke Jan. 20, 1977
陳竹子 Jam C. Ke Jan 20, 1977
住址：美國賓州匹茨堡

乙方代理人 柯正 身份證號碼 J100281559
住址：新竹縣新竹市興南里二鄰興南街四十二號

Audrey Walsh
Notary Public
January 20, 1977

AUDREY WALSH, NOTARY PUBLIC
HAMPTON TWP., ALLEGHENY COUNTY
MY COMMISSION EXPIRES JUNE 25, 1977
Member, Pennsylvania Association of Notaries

中華民國六十六年二月八日

10

CONSULAR SECTION
AMERICAN EMBASSY
TAIPEI, TAIWAN

REPORT OF VISA INVESTIGATION

SUBJECT : CHEN Chin-wen
CTC : 3115/[illegible]
DPOB : [illegible]
INS # : A22 [illegible]

Date of Report: 1/25/79
Investigator : Nelson Young
Reference : [illegible]
Memo 10/26/78

Computer Code:

Approved: Alfredo Gonzales
Vice Consul

Date: [illegible]

SYNOPSIS: SUBJECT's natural parents have moved out of their former residence in Taipei, Taiwan. Their present whereabouts are unknown. SUBJECT is now in the actual custody of Mrs. KE Li Feng, 65-year old mother of the petioner, in Hsinchu, Taiwan. Mrs. KE and family believe that SUBJECT's natural parents are alive and not divorced. SUBJECT's natural parents have visited SUBJECT at Mrs. KE's home only once since the adoption took place. SUBJECT was physically brought over to Mrs. KE's home for custody when SUBJECT was two months and five days old, sometime in December 1976. The adoption paper was prepared and signed before a Chinese district court on February 8, 1977, approximately two months after SUBJECT was brought over to Mrs. KE's home. However, SUBJECT's name appeared on Mrs. KE's household register on January 24, 1977, which indicates the possibility of an initial adoption paper signed by the petioners and the natural parents. Neighbors stated in an interview that SUBJECT had been living with Mrs. KE Li Feng and Mr. KE Cheng-hsiung since December 1976. Mrs. KE admitted in an interview that at the time SUBJECT was brought over to her, an amount of 22,000 NT dollars (an equivalent of ~~$[illegible]~~ 610 US) was given to SUBJECT's natural mother. There was no evidence of SUBJECT's being deserted by or deprived of proper care from his natural parents.

STATUS: - Closed -

DETAILS: On January 8, 1979, Mr. KE Cheng-hsiung's home in Hsinchu City, Taiwan was visited. SUBJECT was seen in the custody of Mrs. KE Li Feng, the petitioner's mother, who is also identified as Mr. KE Cheng-hsiung's mother. Mrs KE furnished the following information during an interview

CONSULAR SECTION
AMERICAN EMBASSY
TAIPEI, TAIWAN

REPORT OF VISA INVESTIGATION

SUBJECT: [illegible]
CTC :
DPOB :
INS # :
Date of Report:
Investigator :
Reference :

Computer Code:

Approved: Date:

(Continuing Page)

SUBJECT was released to her for custody when SUBJECT was two months and five days old (SUBJECT's date of birth: October 4, 1976). At the time SUBJECT was brought over to her for custody, an amount of 22,000 NT dollars (Approx. $610 US) was given to SUBJECT's mother for "buying nutritious food to help recovery of health after the delivery of SUBJECT." The payment was made through a Mr. YEH Wen-chin, the female petioner's brother-in-law in Taiwan, whose current home address is unknown. SUBJECT's natural father is a brick yard worker with not much income to give SUBJECT proper care. Mrs. KE declined to give a written statement concerning the payment of money to SUBJECT's natural mother.

Mr. KE Cheng-hsiung, also custodian of SUBJECT, furnished the following information: He also knows that Mr. YEH Wen-chin, identified in the above paragraph, as the man who made the payment, but he does not know where Mr. YEH lives. The adoption paper was prepared and signed two months after SUBJECT was brought over to him and his mother for custody. SUBJECT's natural parents have shown up at his home to see SUBJECT only once. It was about three or four days after SUBJECT was taken over to his home. Mr. KE confirmed his mother's statement regarding the payment of money, but he declined to put that in a written statement.

An attempt to contact Mr. YEH in Taiwan was unsuccessful. During this investigation, there were no leads developed to help find out the whereabouts of SUBJECT's natural parents. Mr. KE believes that they are still alive and not divorced.

AMERICAN EMBASSY
TAIPEI, TAIWAN

REPORT OF VISA INVESTIGATION

SUBJECT:	[illegible]	Date of Report:	
CTC :		Investigator :	
DPCN :		Reference :	
INS # :			

Computer Code:

Approved: Date:

(Continuing Page)

SUBJECT's name is now reflected in Mrs. KE Li Feng's household register in [illegible], Taiwan. The household register indicates that SUBJECT's living with the KE's was reported and registered with the government agency on January 24, 1977, and that previously SUBJECT was living with his natural parents at #16, Lane 426, Chung Kung Road, Section 2, Neihu District, Taipei, Taiwan. The official record also indicates that SUBJECT was adoped by the petioners on February 8, 1977, at which time SUBJECT's surname was changed from "Chen" to "Ke" as a result of the adoption.

When asked about the reason why adoption paper was signed at a Chinese district court after SUBJECT's moving into Mrs. KE's household, Mrs. KE and Mr. KE could not give a satisfactory explanation. It is understood that there was an old adoption agreement signed before SUBJECT was physically released to the KE's home. An attempt to develop further information concerning the initial agreement was unsuccessful.

INVESTIGATOR's Note:
It is a local practice for the mother to have a child adopted to receive some money for use of buying nutritioun food in the case of the child was born only a couple of months before the adoption took place. It is popular among the people who are very poor and deserve the compensation.

STATEMENT OF THE HONORABLE JOSEPH L. FISHER IN SUPPORT OF H.R. 5745, FOR THE RELIEF OF MICHAEL CHINWEN KE

I was pleased to introduce H.R. 5745, for the relief of Michael Chinwen Ke, in behalf of his adoptive parents and my constituent, Mr. and Mrs. Charles Ke of McLean, Virginia. I heartily support the enactment of this legislation.

Mr. and Mrs. Ke adopted Michael in Taiwan in February, 1977, by proxy, which I understand is permissible under the laws of Taiwan. Michael was given up by his natural parents because they simply could not afford to provide proper care for him. They were quite disadvantaged people, and Michael was their sixth child. The Kes learned of Michael from Mr. Ke's brother, as they had expressed their desire to him that they wanted to adopt a son, and to be able to give a Taiwanese child a better life in the United States. Since the adoption, Michael has been in the custody of Mr. Ke's brother, to whom Mr. Ke has been providing financial assistance to aid in Michael's care. The whereabouts of Michael's natural parents is currently unknown.

Despite the situation, the Immigration and Naturalization Service refused to approve Mr. Ke's petitions to classify Michael as an immediate relative because he failed to meet the definition of "eligible orphan" in that he was not abandoned or deserted but was surrendered by his natural parents. As an alternative, Michael has been registered as an applicant for a nonpreference immigrant visa, but nonpreference visa numbers for immigrants chargeable to China have not been available for quite some time. Because of the large demand, it is doubtful that nonpreference numbers will become available at any time in the near future, so the immigrant visa alternative would not be a viable one. The enactment of H.R. 5745 seems to be the only means by which Mr. and Mrs. Ke could bring Michael to the United States.

Mr. and Mrs. Ke are understandably anxious to have Michael in their home. They are unable to have children of their own, and have already adopted a daughter who is now a United States citizen. The Kes are well suited to be adoptive parents. Their income is adequate to support a family of four, and I am certain that Michael would be provided with all the material benefits, emotional support, love and caring which a child needs to ensure his welfare.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 5745 should be enacted and accordingly recommends that the bill do pass.

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96th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 96–1297

ELENA PATRICIA MATTOS

September 5, 1980.—Committed to the Committee of the Whole House and ordered to be printed

Ms. Holtzman, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 6030]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6030), for the relief of Elena Patricia Mattos, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to facilitate the admission into the United States of the adopted child of a U.S. citizen and a lawful permanent resident alien.

GENERAL INFORMATION

Beneficiary is an 8-year-old native and citizen of Mexico who was adopted in Mexico July 14, 1978. The adoptive parents have visited with the beneficiary on several occasions in Mexico. Adoption proceedings have commenced in California and a favorable home study has been submitted.

The pertinent facts in this case are contained in a letter dated March 10, 1980, from the Immigration and Naturalization Service to the chairman of the Committee on the Judiciary. That letter and accompanying memorandum read as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D.C., March 10, 1980.

A24 253 836

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 6030) for the relief of Elena Patricia Mattos, there is attached a memorandum of information concerning the beneficiary.

The bill would classify the 7-year old beneficiary as a child within the meaning of section 101(b)(1)(F) of the Immigration and Nationality Act, upon approval of a petition filed in her behalf by her adoptive parents, Mr. and Mrs. Napoleon Mattos. This would enable the beneficiary to apply for an immigrant visa as the immediate relative of a U.S. citizen.

Absent enactment of the bill, the beneficiary, a native of Mexico, would be chargeable to the nonpreference portion of the numerical limitation for immigrants and conditional entrants from that country.

Sincerely,

CORNELIUS J. LEARY, *Commissioner.*

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE H.R. 6030

Information concerning the case was obtained from Mr. and Mrs. Napoleon Mattos, adoptive parents of the beneficiary; Mrs. Mary H. Dickenson, adoption worker, county of San Diego; and Attorney Robert S. Walwick, Esq.

The beneficiary, Elena Patricia Mattos, a native and citizen of Mexico, was born August 28, 1972. She presently resides with her natural parents, Mr. and Mrs. Jose Tereso Sierra, in Tijuana, Mexico. On July 24, 1978, the beneficiary was legally adopted in the Fourth Civil Court, Tijuana, Mexico by Mr. and Mrs. Napoleon Mattos. The beneficiary's natural mother is the niece of Mrs. Mattos. The beneficiary has never resided in the Mattos home, but she has visited with them in Mexico on numerous occasions in previous years.

Mr. Mattos is a 64-year-old U.S. citizen. Mrs. Mattos is a 43-year-old citizen of Mexico and legal resident alien. They have been married since 1971 and are unable to have children of their own. By mutual agreement with the natural parents, the beneficiary, the oldest of three daughters, was adopted by Mr. and Mrs. Mattos. They hope to provide her with a secure home and educational opportunities that would not be possible in Mexico due to the poverty of her natural parents.

Mr. and Mrs. Mattos reside in their rented home in Oceanside, Calif. He receives $8,500 per year in civil service retirement benefits. In addition, he receives $1,400 in social security benefits and $1,000 in veteran's benefits annually. Mrs. Mattos is a housewife. Their joint assets consist of a 1977 automobile and household furnishings valued at $5,000.

Mr. and Mrs. Mattos plan to adopt the beneficiary in the United States. Adoption proceedings have commenced in the Superior Court, San Diego, but cannot be completed until the beneficiary is allowed to enter the United States. A home study has already been completed by the San Diego County Department of Public Welfare. That study revealed no derogatory information regarding the Mattos home. The study was extremely complimentary and concluded that the Mattos' can provide the beneficiary with a loving home and definitely have her best interests at heart.

On March 21, 1980, the Department of State submitted a report on this bill which reads as follows:

DEPARTMENT OF STATE,
Washington, D.C., March 21, 1980.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Elena Patricia Mattos, beneficiary of H.R. 6030, 96th Congress, there is enclosed a memorandum of information concerning the beneficiary. This memorandum has been submitted by the U.S. Consulate General at Tijuana, Mexico, in whose consular jurisdiction the beneficiary resides.

The bill would provide for the beneficiary's classification as a child and for granting of immediate relative status upon approval of a petition filed by Mr. and Mrs. Napoleon Mattos, a citizen of the United States, and a lawful resident alien, respectively. It also provides that the natural parents or brothers or sisters of the beneficiary shall not by virtue of such relationship, be accorded any right, privilege or status under the Immigration and Nationality Act.

Sincerely,

J. BRIAN ATWOOD,
Assistant Secretary
for Congressional Relations.

Enclosure.

SUBMITTED BY THE AMERICAN CONSULATE GENERAL AT TIJUANA, MARCH 10, 1980

MEMORANDUM OF INFORMATION CONCERNING H.R. 6030, 96TH CONGRESS, FOR THE RELIEF OF ELENA PATRICIA MATTOS

The beneficiary, Elena Patricia Mattos-Talamantes, was born in Tijuana, Baja California, Mexico, on August 28, 1972. Her present address is Ave. Senador Monzon 146, Colonia Obrera, Tijuana, Baja California, Mexico.

Her name at birth was Elena Patricia Sierra-Arias. Her natural parents Jose Sierra Frausto and Maria de Jesus Arias de Sierra, are living and reside in Tijuana. On July 14, 1978, she was adopted by Mr. and Mrs. Napoleon Mattos, a citizen of the United States, and a lawful resident alien, respectively, with the consent of both her natural parents. Three certified copies of the adoption decree, in Spanish, are attached, along with English translations.

Mr. and Mrs. Mattos accompanied Elena Patricia to an interview at the American Consulate General in Tijuana on March 5, 1980. In the course of the interview, Mr. Mattos said that he and his wife live at 3594 North Way, Oceanside, Calif. He has three children from a previous marriage who are grown and no longer live with Mr. and Mrs. Mattos. Mrs. Mattos does not have children. Mr. Mattos is a retired civil service employee and receives a pension of $7,875 from the civil service retirement system. He also receives nontaxpable pensions of $1,440 from the Social Security Administration, and $1,056 from the Veterans' Administration, for total annual income of $10,371. His only dependents are Mrs. Mattos and their adopted daughter.

The beneficiary has been found ineligible to receive an immigrant visa because she does not qualify as a child within the meaning of sections 101(b)(i)(E) or (F) of the Immigration and Nationality Act, in that, with respect to section (E), she has not resided with and been in the legal custody of her adoptive parents for at least 2 years following her adoption; nor, with respect to section (F) is she an orphan, since both of her natural parents are living.

No investigation or clearance was necessary because the beneficiary is a minor.

The beneficiary had a medical examination on March 5, 1980, and was found to be in good health.

Enclosure: Adoption decree.

Necesitan (3) tres copias certificadas de acta de adopción

JUZGADO CUARTO DE LO CIVIL

[illegible], Baja California a catorce de Julio de mil novecientos [illegible] y ocho.- -

VISTOS para resolver en definitiva los autos del expediente número 1606/78, relativo a las Diligencias de Jurisdicción Voluntaria Adopción promovidas por NAPOLEON PAUL MATTOS Y MARIA PETRA TALAMANTES DE MATTOS, y;- - - - - - - - - - - - - -

- - - - - - - - - - - R E S U L T A N D O :- - - - - - - - - - - -

[illegible]: que por escrito presentado el día veintitres de Junio del año en curso, comparecieron ante éste juzgado los señores NAPOLEON PAUL MATTOS Y MARIA PETRA TALAMANTES DE MATTOS, promoviendo en vía de Jurisdicción Voluntaria Diligencias para que se autorice la adopción de la menor ELENA PATRICIA [illegible], y fundaron su petición en los hechos y consideraciones legales que estimó aplicables. Por auto de fecha veintiocho de Junio del presente año, se tuvo por presentados a los promoventes y se mandó dar vista al C. Agente del Ministerio Público de la adscripción, para que manifestara lo que a su representación conviniera, habiendo comparecido sin manifestar oposición a la tramitación de éstas diligencias, por lo que se citó para dictar ésta resolución, y;- - - - - - - - - - - - - - - - -

- - - C O N S I D E R A N D O :- - - - - - - - - - - -

[illegible] los adoptantes NAPOLEON PAUL MATTOS Y MARIA PETRA TALAMANTES DE MATTOS, acreditaron los requisitos señalados en los artículos 387 del Código Civil y 908 del Código Adjetivo de [illegible] con los siguientes medios de prueba:- a).- La prueba pericial (artículo [illegible] fracción IV del Código de Procedimientos Civiles, de plena eficacia demostrativa (artículo 413 idem), prueba obtenida de los certificados médicos expedidos por el Doctor [illegible] Gutierrez y John L. [illegible] (fojas [illegible] y 10 del expediente), en el que se hizo constar la buena salud de los adoptantes Napoleon Paul Mattos y Maria Petra Talamantes de Mattos.- b).- La prueba documental pública (artículo-

205 [illegible] del Código de Procedimientos Civiles), de pleno valor probatorio (artículo 323 idem), prueba obtenida mediante los [illegible] documentos: Las certificaciones de las actas del [illegible] Civil expedidas por los Oficiales del Registro Civil que obran a fojas [illegible] 4, 5, del expediente.- - - - - - - - - -

- - [illegible] el consentimiento a que se refiere el artículo [illegible] del Código Civil, fué dado por los señores José [illegible] Romero y María de Jesus Arias de Sierra, quienes según el documento público de fojas 3 en la que ejercen la patria potestad sobre la menor de que trata y que hace prueba plena en los términos del artículo 407 del Código de Procedimientos Civiles.- -

- - - En consecuencia es de aprobarse y se aprueba la adopción solicitada de la menor ELSA PATRICIA SIERRA Arias, por parte de los señores NAPOLEON PAUL MATEOS Y MARIA PETRA TALAMANTES DE MATEOS, quienes ejercerán sobre dicha menor la patria potestad.- -

- - - Por lo expuesto y con fundamento además en los artículos 332, 333, 398, 407, 908, 909 y demás relativos del Código de Procedimientos Civiles, es de resolverse y se:- - - - - - - - -

- - - - - - - - - - - - - - - R E S U E L V E :- - - - - - - - - -

- - - PRIMERO.- Se aprueba la adopción de la menor ELSA PATRICIA SIERRA ARIAS, solicitada por parte de los señores NAPOLEON PAUL MATEOS Y MARIA PETRA TALAMANTES DE MATEOS, quienes en lo sucesivo tendrán respecto de la persona y bienes de la adoptada los mismos derechos y obligaciones que tienen los padres respecto de la persona y bienes de los hijos y ejercerán sobre ella la patria potestad.- - - - - - - - - - - - - - - - - - - -

- - - SEGUNDO.- Los adoptantes [illegible] dar nombre y sus apellidos a la adoptada, debiendo [illegible] correspondiente [illegible] acta de adopción, así mismo, [illegible] tendrá para las personas que la adoptan los mismos derechos y obligaciones que tiene un hijo.- - - - - - - - - - - - - - -

- - -[illegible]:- Remítase copia certificada de ésta resolución al C. Oficial del Registro Civil ante quien se celebró el — registro para los efectos de los artículos 84 y 393 del Código Civil.- -

- - -CUARTO:- [illegible]:- - - - - - - - - - - - - - - - - - -

- - -[illegible], definitivamente juzgando lo resolvió y firma el— C. Juez Cuarto Civil, [illegible] PALACIOS, ante el C. Secretario de Acuerdos, [illegible] LEONCIO — FORTUNATO AMADOR, que da fe.- - - - - - - - - - - - - - - - -

dos firmas ilegibles.-RUBRICAS.- - - - - - - - - - - - - - - - -

EL CIUDADANO LICENCIADO LEONCIO FORTUNATO AMADOR, SECRETARIO DE ACUERDOS DEL JUZGADO CUARTO DE LO CIVIL DEL PARTIDO JUDICIAL DE TIJUANA ESTADO DE BAJA CALIFORNIA:- - - - - - - -

- - - - - - - - - - C E R T I F I C A :- - - - - - - - - - -

QUE EN EL EXPEDIENTE NUMERO 1606/78, RELATIVO A LAS DILIGENCIAS DE JURISDICCION VOLUNTARIA ADOPCION PROMOVIDAS POR NATOLEON PAUL MATTOS Y MARIA TERESA TALAMANTES DE MATTOS, — OBRAN LAS PRESENTES CONSTANCIAS LAS CUALES CONSTANTES DE DOS FOJAS UTILES EXPIDO CERTIFICANDO LA FIDELIDAD DE SU CONTENIDO DOY FE:- -

Tijuana, Baja California a catorce de Julio de mil novecientos setenta y ocho.- -

EL C. SECRETARIO DE ACUERDOS.

LIC. LEONCIO FORTUNATO AMADOR.

EL CIUDADANO LICENCIADO LEONCIO FORTUNATO AMADOR SECRETARIO DE ACUERDOS DEL JUZGADO CUARTO DE LO CIVIL DEL PARTIDO JUDICIAL DE TIJUANA, BAJA CALIFORNIA: CERTIFICA QUE EN EL EXPEDIENTE NUMERO 1806/78, relativo al JUICIO DEJURISDICCION VOLUNTARIA ADOPCION- PROMOVIDO POR NAPOLEON PAUL MATTOS Y MARIA PETRA TALAMANTES DE MATTOS, OBRAN LAS PRESENTEWS CONSTANCIAS LAS CUALES ESTAN DEBIDAMENTE COMPULSADAS DE SUSORIGINALES Y CONSTANTES DE DOS FOJAS UTILES. EXPIDO CERTIFICANDO LA FIDELIDAD DE SU CONTENIDO. CONSTE Tijuana, B. C. a 5 de [illegible] de 1980.-

EL C. SRIO. DE ACUERDOS.

LIC. LEONCIO FORTUNATO AMADOR.

Tijuana, Baja California, July fourteen nineteen hundred seventy
eight.- -

- - - WHEREAS; to give final sentencing on record number 1606/78,
related to the adoption promoted by NAPOLEON PAUL MATTOS and MA--
RIA PETRA TALAMANTES DE MATTOS, and;- - - - - - - - - - - - - - - -

- - - - - - - - - - - -FINDINGS OF FACT:- - - - - - - -

- - -1st.- That by a writ presented June twenty three of the cur--
rent year, appeared before this Court NAPOLEON PAUL MATTOS and MA-
RIA PETRA TALAMANTES DE MATTOS promoting through voluntary juris--
diction proceedings directed to authorize the adoption of the min-
or ELENA PATRICIA SIERRA, and based their request on the facts and
legal considerations that they considered appliable. By a writ --
dated June twenty eight of the current year, the adoptants were --
considered present and information was given to the District Attor
ney adjuncted for his manifestations, since he appeared without a-
ny oposition to these proceedings therefore the parties were sum--
moned to hear this resolution and;- - - - - - - - - - - - - - - - -

- - - - - - - - -CONCLUSIONS OF LAW- - - - - - - - -

- - - I.- That the adoptants NAPOLEON PAUL MATTOS and MARIA PE--
TRA TALAMANTES DE MATTOS, credited the requirements indicated in-
Articles 387 of the Civil Code and 908 of the Civil Procedures Co
de with the following means of proof: a) The expert testimony --
(Article 285 fraction IV of the Civil Procedures Code) of full --
demostrative efficiency (Article 413 idem), proof obtained through
the medical certificates issued by Doctors Isauro Gutierrez and -
John E. Egdahl (pages nine and ten of the record) and which Napo-
leon Paul Mattos and Maria Petra Talamantes de Mattos are in good
health.- b) The public documentary evidence (Article 285 fraction
II of the Civil Procedures Code) of full value (Article 328 idem),
proof acquired through the following documents: The Civil Record's
Certifications issued by the Civil Registry Clerks which appear --
on the record's pages 3, 4 and 5.- - - - - - - - - - - - - - - - -

- - - II.- That the consent mentioned in Article 394 fraction I -
of the Civil Code was given by Mr. Jose Sierra Frausto and Maria -
de Jesus Arias de Sierra who.. according to public document on page
3 are who have the Patria Potestas over the minor and which makes-
full proof within the terms of Article 407 of the Civil Procedures

.../...

....Code.- -

- - - III.- Therefore, it is to be aproved and it is aproved the requested adoption of the minor ELENA PATRICIA SIERRA ARIAS by Mr. NAPOLEON PAUL MATTON and MARIA PETRA TALAMANTES DE MATTOS, who -- will exercise the Patria Potestas over the aforementioned minor.-

- - - By all the previously exposed and based on Articles 392, 393 398, 407, 908 and 909 and all related, from the Civil Procedures-Code, it is to be decreed, and it is - - - - - - - - - - - - - -

- - - - - - - - - - - - - - DECREED- - - - - - - - - - - - - - -

- - - FIRST.- The adoption of the minor ELENA PATRICIA SIERRA -- requested by Mr. NAPOLEON PAUL MATTOS and MARIA PETRA TALAMANTES DE MATTOS who in the future will have in relation to the person adopted, as well as her goods, the same rights and duties that - parents have in relation to the person and goods of their offsprings and will excercise the Patria Potestas over her, is herefore aproved. -

- - - SECOND.- The adoptants can give name and their surnames to the adopted, and the correspondant notations should be made in - the adoption certificate, at the same time the adopted will have in relation to the adoptants, the same rights and obligations - that an offspring has. -

- - - THIRD.- A certified copy of this resolution should be sent to the Civil Registry Clerk, before who the registration was celebrated to the effects of Articles 84 and 398 of the Civil Code.

- - - FOURTH.- NOTIFY IT. -

- - - THUS.- Definitely judged was solved and signed by the -- Fourth Civil Judge, ATTORNEY FRANCISCO MENDOZA PALACIOS by before the Agreements Secretary ATTORNEY LEONCIO FORTUNATO AMADOR, who attests. -

Two illegible signatures.- FLOURISHES.- - - - - - - - - - - - -

THE CITIZEN ATTORNEY LEONCIO FORTUNATO AMADOR, AGREEMENTS SECRETARY OF THE FOURTH CIVIL COURT, OF THE TIJUANA JUDICIAL PARTY, BAJA CALIFORNIA STATE: -

- - - - - - - - - - - - - - CERTIFIES - - - - - - - - - - -

THAT ON RECORD NUMBER 1606/78, RELATED TO THE PROCEEDINGS OF -- VOLUNTARY JURISDICTION OF ADOPTION, PROMOTED BY NAPOLEON PAUL - MATTOS AND MARIA TERESA TALAMANTES DE MATTOS APPEAR THE [illegible]

.../...

....EVIDENCES CONSISTING OF TWO PAGES THAT I ISSUE, CERTIFYING - THE FIDELITY OF IT'S CONTENTS. I ATTEST. - - - - - - - - - - Tijuana, Baja California, July fourteen, nineteen hundred seventy eight. -

THE AGREEMENTS SECRETARY

Flourish

ATTY. LEONCIO FORTUNATO AMADOR

A seal that reads: Baja California State Judicial Party. Mexican United States. Fourth Civil Court. Tijuana, Baja California. -- The rights of issue over certified copy were paid under receipt-number 43654 according with Article 43 of the Income Law of the-Baja California State. Tijuana, Baja California, July 14, 1978. The Assitant Collector (illegible signature).

THE AFOREGOING TRANSLATION WAS DONE BY MR. FAUSTO GARCIA, OFFICIAL INTERPRETER ENGLISH-SPANISH OF THE TIJUANA COURTHOUSE, TO THE BEST OF HIS ABILITY.

MR. FAUSTO GARCIA

Mr. Clair Burgener, the author of this bill, submitted the following statement in support of his bill.

STATEMENT OF REPRESENTATIVE CLAIR W. BURGENER IN SUPPORT OF H.R. 6030, FOR THE RELIEF OF ELENA PATRICIA MATTOS, BEFORE THE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW, HOUSE COMMITTEE ON THE JUDICIARY

The beneficiary of this bill, Elena Patricia Mattos, is 7 years old. She is the adopted child of my constituents, Mr. and Mrs. Napoleon Mattos of Oceanside, Calif. Mr. Mattos is an American citizen; his wife is a permanent resident. They adopted the child in Mexico in July 1978, but both of the child's' natural parents are still living, and are well known to the Mattos family. Mrs. Mattos is the aunt of the natural mother of the child, and Mrs. Mattos helped to raise the mother, but has not lived with the adopted child for 2 years after the adoption. Mr. and Mrs. Mattos have been close to the family and have sent money to support the child for several years.

The natural parents live in near poverty in Tijuana, and cannot afford to take care of Elena properly. The Department of Public Welfare in San Diego County has conducted a home study, and even arranged an interview with the natural parents at the border station at San Ysidro. The home study shows the recommendation that this adoption is in the best interest of the minor. Also, the Mattoses have filed a petition for adoption in the United States that is ready for action as soon as the child is in this country.

Mr. and Mrs. Mattos are anxious to give the little girl the love and care they feel she deserves, and which she is unable to receive under her present living conditions.

I respectfully request that the subcommittee give favorable consideration to this bill to help my constituents. I feel they are indeed worthy of this special assistance.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparision has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the committee is of the opinion that H.R. 6030 should be enacted and accordingly recommends that the bill do pass.

○